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Supreme Court of the United States

OCTOBER TERM, 1967

No. 961

WILLIAM HETTLEMAN, PALMER D. EDMUNDS, and J. EDWARD JONES,

Appellants,

vs.

CHICAGO LAW INSTITUTE, ET AL.,

Appellees.

On Appeal From The Supreme Court Of Illinois.

JURISDICTIONAL STATEMENT.

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First District, entered September 20, 1966, and February 20, 1967, respectively, denying William Hettleman and Palmer D. Edmunds a timely appeal as of constitutional right to that court, and their subsequent timely petition to that court for leave to appeal to it, respectively, from the judgment entered July 13, 1966, aforesaid; and from an order of the Supreme Court of Illinois denying their motion to reconsider that court's order denying a timely petition for leave to appeal from the Illinois Appellate Court to the Supreme Court of Illinois.

OPINIONS BELOW.

The only opinion rendered in both appeals was that of the trial judge, Donald J. O'Brien, filed in 65 CH 6863 on July 11, 1966. It appears in full on pages 137-139 of the printed Abstract, hereinafter referred to as Abs. (Document No. 2, Index of Documents Transmitted to this Court by the Clerk of the Supreme Court of Illinois in Case No. 40603). A copy of O'Brien, J.'s opinion and of the final orders of the Supreme Court of Illinois, dated June 20, 1967 and September 14, 1967, are attached hereto as Appendix A, B and C.

JURISDICTION.

There were drawn in question in the trial court, in the intermediate appellate, and in the state's highest, court, the validity of the 1963 amendment to the Law Libraries Act of 1961, Ill. Rev. Stat. of 1965, ch. 81, sec. 81, (Appendix F-3) and the implementary ordinances of Cook County passed on December 11, 1962, September 30, 1963, June 17, 1965, and November 23, 1965 (Appendix F-2, 4, 5, 6) which, on their face and as they have been sought to be applied to the appellants, and others similarly situated, were asked to be adjudged unconstitutional, void and of no effect.

Notices of Appeal to this Court were duly filed in the Supreme Court of Illinois by Hettleman and Edmunds on September 15, 1967, and by Jones on November 7, 1967.

Jurisdiction of the Supreme Court of the United States to review is conferred by Title 28, U.S.C., § 1257(2).

The jurisdiction of this Court is fully sustained by *The Trustees of Dartmouth College* v. *Woodward, 4 Wheat.* 518, 655. The facts in the case at bar parallel closely those in the *Dartmouth College* case whose principles are controlling and foreclosed the filing of the suit (65 CH 6863) in the Circuit Court of Cook County, Illinois.

STATUTES INVOLVED.

(See Appendix F).

QUESTIONS PRESENTED.

The following questions are presented by this appeal:

A. Whether the 1963 amendment to the Laws of 1961, page 473, sec. 1, 1965 Ill. Rev. Stats., ch. 81, sec. 81, by House Bill 1199 (The Final Synopses and Digest of the 73d Ill. Gen. Assembly to June 30, 1963, page 754) on its face, and as it has been sought to be applied in this case, is unconstitutional, in that it is repugnant to the Constitution of the United States of America in the following respects:

1. By violating the contract clause of Article I, sec. 10, of the U. S. Constitution, and, through it, the Fourth, Fifth, and Fourteenth Amendments thereto, in abridging the constitutionally protected personal and property rights and franchises of The Chicago Law Institute, and its members, under the special charter granted them by the Illinois General Assembly, on February 18, 1857:

a) By infringing the contract entered into, on February 18, 1857, between The Chicago Law Institute and its members, and the State of Illinois by amending and altering their said special charter without the consent of said corporation, and its members;

b) By infringing the contract entered into, on February 18, 1857, between The Chicago Law Institute and its members, and the State of Illinois by amending and altering their said special charter without the consent of said corporation, and its members, conceding *arguendo* it was created for educational and charitable purposes and objects, by transferring its assets to another charitable entity, *arguendo* the Cook County Law Library Advisory Board, and to a

quasi-municipality, the County of Cook, Illinois, without the consent of said corporation, and its members;

c) By infringing the contract entered into, on February 18, 1857, between The Chicago Law Institute and its members, and the State of Illinois in that said 1963 amendment to the Laws of 1961, page 473, sec. 1, 1965 Ill. Rev. Stats., ch. 81, sec. 81, has, in effect, sought to dissolve said corporation without its consent or that of its members, or the institution of a suit by the Illinois Attorney General to dissolve it for misuser or nonuser;

d) By infringing the contract entered into, on February 18, 1857, between the Chicago Law Institute, and its members, and the State of Illinois by transferring the control and management of the affairs of said corporation, without its and their authority, from its 6 officers and 9 member Board of Managers, constituting its 15 man Executive Committee, to the County of Cook and its 9 appointees to a Cook County Library Advisory Board;

e) By infringing the contract entered into, on February 18, 1857, between the Chicago Law Institute, and its members, and the State of Illinois, by depriving and divesting the members of said corporation of their franchise to vote, elect officers and Board of Managers thereof, and to participate in the affairs of said corporation, without its or their consent, thus depriving them of their personal and property rights without due process of law.

B. Whether the implementary Ordinance of Cook County, Illinois, adopted November 23, 1965, on its face, and as it has been sought to be applied in this case, is unconstitutional, in that it is repugnant to the Constitution of the United States of America in the following respects:

1. By violating the contract clause of Article I, Sec. 10, of the United States Constitution, and, through it,

the Fourth, Fifth, and Fourteenth Amendments thereto, in abridging the constitutionally protected personal and property rights and franchises of the Chicago Law Institute, and its members, in and to a certain contract, the 11th decennial lease, entered into by and between The Chicago Law Institute and the Board of Commissioners of Cook County, a political subdivision of the State of Illinois, on March 11, 1958, which does not expire by its terms before April 4, 1968:

a) By infringing the decennial, bilateral contract entered into between The Chicago Law Institute and the County of Cook on March 11, 1958, by becoming a party to a conspiracy to the filing of the unwarranted and unauthorized suit at bar to take the assets, including the unique and valuable 150,000 volume collection of law books, of The Chicago Law Institute, for a public use without any compensation therefor, and dispossessing and ousting the said corporation, and its members, from its said leased premises, and depriving its members of their liberty of ingress to and egress from the said leased premises, and the use thereof as their workshop, from August 12, 1966 to April 4, 1968;

b) By infringing the decennial, bilateral contract entered into between The Chicago Law Institute and the County of Cook on March 11, 1958, after the latter's adoption of an Ordinance, on December 11, 1962, in which Cook County reaffirmed the decennial, bilateral contract, executed March 11, 1958, and its intent to abide by it till its expiration, should the members of The Chicago Law Institute refuse to accept its request that they "donate" the Institute's library to Cook County, and after the almost unanimous refusal of the members attending a special meeting, on June 18, 1965, to accept the Institute Board's recommendations thereat to "donate" all its

assets to Cook County, to dissolve the corporation, and to permit the use of its name to file a suit in chancery to get court sanction to all these proceedings, in that it conspired with unfaithful members of the Institute's Board to appropriate the corporation's assets, including its 150,000 volumes of law books, for a public use without any compensation whatsoever therefor.

2. By violating the Fourth, Fifth and Fourteenth Amendments of the United States of America in engaging in a secret conspiracy to seize and appropriate the property of the Chicago Law Institute for a public use without any compensation therefor, in case the Institute members did not voluntarily "donate" its library to Cook County, as requested in the insinuating Ordinance of December 11, 1962,

a) By adopting an Ordinance, on June 17, 1963, appointing 9 lawyers, 2 of whom were appointed by the judges of the Circuit Court of Cook County who had been appointed by Cook County to the Judicial Advisory Council of Cook County, and 6 of whom had been recommended by the Institute's Board from its own, and not from the entire, membership, contrary to its Ordinance of December 11, 1962, well knowing that, unless the membership, at its special meeting, ratified the selection of these 6 men to the Cook County Library Advisory Board or their appointment was disclosed thereat, neither of which occurred at the special meeting on June 18, 1965, or ever, they would be guilty of a conflict of interest and breaches of fiduciary duty, as actually occurred when 2 of its said Board member appointees, Allman and Cecchini, at the Institute's Board meeting, on November 12 or 19, 1965, voted with 2 other non-appointed Institute Board members, Schrader and Tappy, against 3 non-appointed Institute Board members, Canady, Luken and Zillman, to authorize the Institute's presi-

dent to execute a "donative" contract with Cook County, which contract, in turn, authorized the institution of the suit at bar, and was but a recast of the almost unanimously defeated recommendations voted upon (600 vs. 13) at the members' special meeting on June 18, 1965;

b) By adopting an Ordinance on November 23, 1965, well-knowing the foregoing facts, authorizing President Simon of the County Board to execute the so-called "donative" contract with the pretended Chicago Law Institute on December 6, 1965, just four days before the suit at bar was filed on December 10, 1965.

C. Other Questions:

1. Whether there has been a denial of procedural due process of law by violating the Fifth and Fourteenth Amendments to the Constitution of the United States of America in the proceedings of the case at bar in the court below:

a) By the trial judge denying a petition for a change of venue from him which alleged, supported by official documentation, that, from 1957 until the fall, 1964 (when he was elected a judge of The Circuit Court of Cook County and assigned to Chancery), he was a member of the Illinois Senate; that he was senate appointee to the Illinois Judicial Advisory Council which maintained nexus with the Cook County Advisory Council, composed of Cook County Circuit Judges appointed thereto by the Board of Commissioners of Cook County, who were active in seeking acquisition of The Chicago Law Institute for a proposed Civic Center to house the courts; that he was for many years, prior to 1963, the minority *floor leader* and the spokesman for the Mayor of Chicago who, as was well known to him, was also desirous, as Chairman of the Public Buildings Commission

charged with building the Civic Center, of acquiring The Chicago Law Institute Library to adorn it and for other reasons; that, at the behest of his political patron, he introduced House Bill 1199 to bring Cook County within the County Libraries Act, on June 19, 1963, and sponsored it, successfully, as a step in the conspiracy to appropriate, if necessary, private property for a public use without any compensation therefor;

b) By the trial court entertaining jurisdiction when, on the face of the complaint, it was clear the plaintiffs lacked capacity to sue, conceding *arguendo* their conclusory allegations that The Chicago Law Institute was a public corporation, inasmuch as it has been the law in England, and in the United States, from the earliest times, that the State, as *parens patriae,* alone can file a *contested* suit to invoke equity's power *cy pres,* and control the litigation, where it is *alleged* "the assets of the Institute will be *wholly* lost and dissipated;"

c) By the trial court, lacking jurisdiction over the subject matter, entering a decree;

d) By the trial court's failure to dismiss the complaint;

e) By the trial court refusing to permit appellant Hettleman to file his counteraffidavit in opposition to the plaintiff's motion for summary judgment, as permitted him by the clear, unequivocal and unambiguous Illinois Civil Practice Act, Section 57(3);

f) By the trial court's grant of a motion for summary judgment for the application of equity's power *cy pres,* although the Black et. al. Answer and counteraffidavit, and that of appellant Hettleman, which the trial court refused improperly to file, contain multitudinous material, triable, facts, especially those relating to the conspiracy between the County of Cook and certain unfaithful members of the Institute's

Board to take the 150,000 volume unique law library and assets of the Institute for a public use without any compensation, in violation of the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States of America;

g) By the grant of plaintiffs' motions to dismiss the perfected Notices of Appeal of the appellants Hettleman and Edmunds, and Jones, on the feigned issue of non-compliance with Rule 35 to bar ultimate review by this Court of the many federal questions involved in the case at bar, which resulted in the affirmance of the trial court's decree of July 13, 1966 without appellants' opportunity to be heard fully in the Illinois appellate courts.

STATEMENT OF THE CASE.

The Court's indulgence is prayed if the Jurisdictional Statement may be longer than generally desired, since a clear understanding of this case requires recital of numerous conspiratorial events that led up to the suit at bar; the complex operational facts; the number of dramatis personae; the three records to which reference must be made in tracing how the constitutional questions were raised at three court levels; and the unique substantial federal questions raised having urgent national importance. The format in *Baggett et al.* v. *Bullitt* (October Term, 1963, Appeal No. 220) was followed in some respects.

In 1837, the great Mr. Chief Justice John Marshall had barely breathed his last. The controversial Taney had succeeded him the year before, after rejection as an Associate Justice. Martin Van Buren was President. A half century later, Melville W. Fuller, who had served on the Board of Managers of The Chicago Law Institute in 1872-73, was its First Vice-president, and its President, in the years 1873-75, became Chief Justice of this Court. Illinois acquired statehood in 1818. The County of Cook was formed in 1833. The Village of Chicago had just become incorporated as a City.

By 1837, 19 lawyers had come to Chicago. Law books were few and costly. They formed The Law Institute, a sort of cooperative non-profit association, to exchange the *use* of their books. By 1857, about 60 lawyers had settled in Chicago. Most of them had been trained at the New

York, Virginia, Maryland Bars and at the Harvard Law School, where they had come under the spell of the great authority of his day on the law of trusts, Mr. Justice Story, and Simon Greenleaf, his disciple. (Doc. No. 6 in No. 40603, Hettleman and Edmunds' Supplemental Petition for Leave to Appeal, Exh. A, transmitted to this Court by the Illinois Supreme Court Clerk). These lawyers had been trained to abhor the Statute of Charitable Uses (43 Eliz. c. 4) which they well knew had been either repealed after the American Revolution, or had never become part of the common law, in quite a number of states. They knew well the story of how Henry VIII seized private property (including the libraries, of the Catholic monasteries) under the royal prerogative and sign manual.

When it then became evident that they needed a central location for their books and workshop, they did not create a trust; they obtained a special charter, on February 18, 1857, from the State of Illinois to perpetuate, in corporate form, their primary object: an adequate working law library by which to make a living. They prefixed "Chicago" to their old name. They assigned title to their law books, theretofore retained in themselves, to the Corporation. They received its transferable stock, an aliquot part of the library (Abs. 12, sec. 3) in payment (Jones' R. 40788. Perficient co-founder Elliott Anthony letter, dated January 28, 1897, to Merritt Starr, then the Institute's president).

To disabuse the Internal Revenue that the Corporation was formed for profit, section 2 of its charter was amended in 1907 (Abs. 16), declarative of its character, from its inception, as a private, non-profit professional membership service corporation (Jones' R. 40788, pages 72-73,

transmitted by the Clerk of the Illinois Supreme Court to this Court, Reports of Institute presidents Hacker for 1906 and Paine for 1907). That aliquot interest was, thereupon, called a certificate of membership, but the incidents of ownership (the right to sell, buy, bequeath, or freedom from execution of that interest, Abs. 15, sec. 2), was never diminished. To make this clear, the 1907 amendment reaffirmed the private character of the corporation. It was to continue "to be conducted, maintained, and carried on by the *members* of said corporation" (no visitatorial powers by any public body). Sec. 2 of the *By-Laws* was amended (Abs. 18) to also reaffirm the private corporation: "All certificates for shares . . . shall be taken and considered to be certificates of membership . . . *as provided by the Charter.*"

The thousands of certificates issued since the 1907 amendment to sec. 2 of the Institute's charter still certify *ownership of a share* in the Institute (Jones R. 40788, p. 177; Doc. No. 6, in No. 40603, Hettleman and Edmunds' Supplemental Petition for Leave to Appeal, Exhs. C, C1, C2, Transmitted to this Court by the Illinois Supreme Court Clerk).

The April 20, 1907 amendment to sec. 2 of the Institute charter was made *expressly* in accordance with the Laws of Illinois (Abst. 16). Those laws (Appendix F-1. Full analysis of them was made in Document No. 3, Record of the Illinois Appellate Court. Transmitted to this Court by the Clerk of the Illinois Supreme Court in No. 40603, Petition for Leave to File a Notice of Appeal Under C.P.A., § 76(1) and Illinois Supreme Court Rule 29) state specifically that an amendment of the objects in an existing special charter shall not change the powers, right or privileges thereunder!

Judge Anthony's account of the corporate foundation was confirmed in an article which appeared in the newspaper, *The Chicago Times*, of December 23, 1861, just 106 years ago. In 1963, Cook County Judges Cornelius J. Harrington, Charles S. Dougherty, Samuel B. Epstein and Harold G. Ward made a Report to the Illinois Judicial Conference Executive Committee on the "deal" for Cook County's acquisition of the private Institute Library. They quoted from that *Chicago Times* article (Abs. 65-66), but omitted the following significant, and damaging, statement therein: (Doc. 6, Record in 40603, Hettleman and Edmunds' Supplemental Petition for Leave to Appeal, Exhibit "B"):

> "All the members are stockholders, and thus have a personal, as well as a pecuniary, interest in the prosperity of the enterprise."

The charter, in the light of background factors, contains all the attributes of a private corporation. The perficient founders, "associates and successors", were vested with all the powers, privileges and immunities to carry into effect the purposes of its creation (Abs. 12, Sec. 1). They had the power to sell the library, if necessary or desirable (Abs. 12, secs. 1 and 3), and reinvest the proceeds to support many functions in the law, including legal publications, or law lectures, etc., such as now being given yearly by the Northwestern University Law School in honor of Julius Rosenthal, the Institute's devoted librarian for 36 years—1867-1903.

Appellees make much of section 2 of the charter: A law library was created; ergo, it is an educational institution, though no compliance with Illinois statutes under which those qualified by curriculum, staff, facilities may

incorporate as an educational institution was ever shown. Since "education" of orphans and poor children is used in the Statute of Charitable Uses, 43 Eliz. c. 4, the Institute is "charitable". Hence, equity *cy pres* applies to it. As used in 1857, sec. 2 was meant to provide a law library workshop, for the mutual benefit of its members, as does the laboratory for the physicist and the chemist, in which the lawyer-member could have the tools to improve his skill in serving his clients and to earn his fees. Appellees recognized this was still the Institute library's primary purpose and object in 1965 (Abs. 110, in No. 40603, Answer to question 2 by the plaintiffs' attorney stated, *ante litem motam,* that the cost of membership was deductible from income taxes, as loss, since the lawyers used the library in their business).

The original of every phrase of the objects in § 2 of the charter was traced thoroughly (Doc. No. 1, pages 51-54, Petition for Leave to Appeal in No. 40603 to the Illinois Supreme Court. Transmitted by its Clerk to this Court) to prove that the perficient founders had not in mind, in 1857, the appellees' 1965 construction of those phrases: to dedicate themselves to the dreamy object of promoting the happiness and welfare of mankind. Those were hard times, just preceding the Civil War. Chicago was a poor, pioneer, small city which had experienced devastating epidemics a few years before. Lawyers were struggling for survival. Uppermost in their minds was how to best equip themselves with law books needed badly in the harsh struggle.

The Institute did not get organized till the fall, 1858, as appears from that *Chicago Times* article. Sec. 6 of the Charter (Abs. 13) contained the Institute's part of the

bilateral lease agreement until the Court Clerk made available space in the County Court House in the fall, 1858, to complete the Cook County's part of the bilateral lease agreement. It was then incorporated and integrated as a whole in the first decennial bilateral lease (Abs. 70-74; By-laws, sec. 20, Abs. 34). The arrangement was so satisfactory to Cook County that it has required since then that the Institute covenant "to remain in said County Building".

This happy and mutually beneficial relationship between the parties became uneasy when newspaper stories began to appear, late in 1961, that a Civic Center was being planned to which the courts would be removed across the street from the County Building. The 11th decennial lease had been signed about 3½ years before, in 1958. It had over 6 years to run. Institute representatives asked Judge Harrington, close to the mayor, whether the Institute's lease was to be continued in the Civic Center. Construction thereon was to start in 1963. Completion was expected in 1965. The reply was to pay a cash rental of $8.26 per square foot; to remove elsewhere; or to "donate" the Institute Library to Cook County to be placed in the Civic Center. They then asked Judge Epstein if the Institute would be permitted to complete its lease in the old quarters. The answer was a decisive negative, although he was told that the asked Civic Center rental was prohibitive (Vol. II in No. 40603, transmitted to this Court by the Illinois Supreme Court and Clerk, contains minutes of meetings by dates. See those of December 15, 1961 and January 12, 1962).

Faced with the dilemma of either donating this magnificent and very valuable law library to Cook County or

having its lease terminated upon completion of the Civic Center (Abs. 87, Vol. II, Minutes of December 15, 1961; Abs. 88, Vol. II, Minutes of January 12, 1962; Abs. 88-89, Minutes of January 26, 1962; Abs. 89, Minutes of March 16, 1962), and thoroughly discouraged by the constant rebuffs of the City and County officials and the ultimatum of the "Give us your library or else", the Institute representatives turned to the local federal judges (Abs. 91, Minutes of October 4, 1962; Abs. 92, Minutes of November 16, 1962).

As the result of the first meeting with them, on September 27, 1962, attended by Judges Hoffman, Castle, Campbell and Robson, a tentative deal was agreed upon. Their offer, open till December 1, 1962, was subject to acceptance by the Institute membership and the Federal Courts' Library Committee. Later letters from Judges Castle and Robson made the extended offer subject also to Cook County's right of first refusal. If Cook County refused, assurance was given that the United States Government would accept or confirm. Communication was then had with Daniel P. Coman, the assistant to Seymour Simon, president of the Board of Commissioners of Cook County, Illinois.

On November 30, 1962, President Simon wrote a letter (Abs. 93, Minutes of December 4, 1962) making a proposal which he urged be submitted promptly to the Institute members for acceptance, copies of the letter going to the Mayor and Judge Harrington, among several others. This letter is referred to in Appendix F-2.

An adjourned meeting of the Institute's Board on December 4, 1962 (faced with the deadline set by the Federal Judges and the said Simon letter of November 30,

1962) decided to call a special meeting of the members on December 20, 1962 to then submit both propositions to them for decision. Soon as Judge Harrington and others heard of this (doubtless fearful that the membership, upon learning of the fact of the ultimatum, would favor the U. S. Government offer), they hastened to forestall the projected December 20, 1962 members' special meeting, by arranging a luncheon meeting with Institute representatives for December 10, 1962 at the Mid-Day Club. (Abs. 93-94, Minutes of Meeting December 7, 1962 in Vol. II in 40603). An Institute Board meeting was called promptly for December 7, 1962, which rescinded the call for the members' special meeting.

An agreement was reached to close the deal with Cook County, at that luncheon meeting. The Institute members were never told of the vote to call them into special meeting or its rescission. On December 11, 1962, the next day, Cook County passed the Ordinance, Appendix F-2 (Abs. 94, Vol. II, Minutes of December 14, 1962). The deal was that the Institute Board would try to persuade the members to accept the December 11, 1962 Cook County Ordinance, while Cook County agreed not to disturb the peaceable possession by the Institute and its members until the lease expired on April 4, 1968, if the members did not accept. A letter was, thereupon, transmitted to Federal Judge Robson that, since the Institute would be unmolested in its present quarters, the Institute Board felt the Institute should stay where it was. No mention was made therein that a gentlemen's agreement had been reached to push the Cook County deal. In the course of this litigation, when the 1963 Report of Judges Harrington et al. (page 14 of this Statement) came to light (Abs. 67-68), the prime movers, conspiring allegedly with Cook County,

denied that the donative deal on December 10, 1962 at the Mid-Day Club, was made, as alleged by the Judges (Abs. 103, Exh. E, p. 5, attached to Daly Affidavit, Pres. Schrader report for 1963, in No. 40603). No explanation was ever made why the alleged misrepresentation by the judges was never called to their attention. The prime movers had admitted at depositions that they never did so notify the judges.

Ben Liss was on the Institute Board in 1961, having become an Institute member in 1956, and became the Institute president for 1964. At the December 4, 1962 Institute Board meeting, at which it was voted to call a special meeting of the members for December 20, 1962 to let them decide then what to do, Liss began to sing dissolution. He continued it at the December 7, 1962 Board meeting at which the call for special meeting of the members was rescinded. He confided thereat that he had gone so far, on his own, to talk to an Assistant Illinois Attorney General about filing a suit for dissolution, in order to protect the Board members, against which was never disclosed (Abs. 93, Vol. II, Minutes of Board Meeting December 7, 1962). The seminal idea of invoking *cy pres* to close up the Law Institute germinated into the suit at bar.

About 1 year later, on December 11, 1963, Liss wrote a very strange letter (Abs. 95, Vol. II, Minutes of Board Meeting, December 13, 1963) to President Schrader and John W. Daly, a fellow Institute Board member. He proposed that, at the forthcoming annual meeting of the members to be held on January 31, 1964, there be submitted a plan of liquidation and distribution which should include giving the library "presumably" to Cook County

and filing suit to approve "the liquidation and distribution under the *cy pres* doctrine." He had already set the legal machinery in motion to accomplish his ends, concluding with

> *"We can be assured of every cooperation by the courts and by the Attorney General,* and *I feel certain that our recommendations to the court would be approved by it and the Attorney General."* (italics supplied)

President Schrader replied, disapproving submitting any liquidation plan at the forthcoming annual meeting, and concluded:

> "I believe that fairness demands that the membership be informed of the contemplated future of their Institute."

Daly was really shocked. He wrote a 2 page rebuking letter in which he wrote:

> "I see no reason to consider the bringing of any action under the *cy pres* doctrine as, *in my opinion, such doctrine does not apply to the Law Institute.* * * * I am opposed to having any of our Board members conferring with the Attorney General, or other law agencies, or Courts regarding the business of The Chicago Law Institute, unless and until authority to do so is obtained from the Board of Managers of the Institute, or the membership generally after proper meeting had." (italics supplied)

On December 31, 1962, the Institute had $32,000 cash, $61,000 securities, and a small current liabilities only (Abs. 103, Exh. D, pages 11-13, in Record No. 40603, Vol. II, page 75). On December 31, 1963, the Institute's financial condition was still strong, with about $23,000 cash and about $61,000 in marketable securities (Abs. 103, Vol. II, p. 76). Although the Board's efforts ceased to in-

crease the membership as useless, the cash and securities positions remained unchanged, at the end of the calendar year 1964 (Abs. 103, Vol. II, p. 77), and remained so during 1965 when the suit at bar was filed on December 10, 1965.

While Liss and other members of the Institute's Board were boring from within, Cook County was at it from without. Jones' Affidavit to his Petition for a Change of Venue from Donald J. O'Brien, J. (Jones 40788, pp. 27-34) recites the nexus between him, as the Illinois Senate appointee from 1957-1964 (when he was elected a judge of the Circuit Court of Cook County) on the Illinois Judicial Advisory Council, and the Cook County Judiciary Advisory Council, on which were Judges Harrington and Dougherty by appointment of the Board of Commissioners of Cook County, in exchanges of reports dealing with proposed legislation about matters touching the courts.

On May 5, 1961, the Illinois General Assembly approved House Bill 434 which provided that Illinois counties with 500,000 population or less could create free, public law libraries. Senator O'Brien voted for that Bill. The Illinois Supreme Court then created an Executive Committee which, in turn, recommended to that Court that it appoint a Committee on Courthouse and Jury Facilities. In 1963, that Court appointed on that Committee four judges from Cook County: Cornelius J. Harrington, Chairman, Charles S. Dougherty, Samuel B. Epstein, and Harold G. Ward. That Committee's 1963 Report (referred to on pages 14, 17 of this Statement and at Abs. 62-69) stated (Abst. 65-68):

> "The other item in our report is concerned with the acquisition by Cook County, for the court building (Civic Center), of probably the *most* valuable and

complete law library in the world (showing the judges' ignorance of the law libraries at Harvard, Yale, Columbia, or excessive joy at Judge Harrington's victorious ultimatum to give the library to Cook County or move). . . .

"Some of you know that the Chicago Law Institute is a *private* bar association consisting of approximately 1500 members who have purchased memberships *and who support the library by annual assessments*. . . . (par. 8, Exh. C, Abs. 42 admits this).

"During the planning of the new courthouse . . . Mayor Daley, having in mind the *public law libraries* existing downstate, pursuant to statute, Ill. Rev. Stat. (1961) c. 81, § 81, insisted that the law library in the new building must be open to all members of the bar and *not restricted to a private membership*. . . .

"On May 8, 1963, (sic), House Bill 1199 was introduced amending the Act in relation to the establishment of county law libraries to make it apply to Cook County." (emphasis supplied).

Donald J. O'Brien, Mayor Daley's Senate spokesman and floor leader, well knowing that the gentlemen's agreement, made on December 10, 1962 at the Mid-Day Club meeting which Judge Harrington attended, had never been submitted to the Institute's members (as Cook County itself had theretofore urged until the sneak deal was closed at the Mid-Day Club without the knowledge also of the local federal judges) and well knowing of the objective to be attained, on June 19, 1963 introduced House Bill No. 1199 to amend the 1961 Law Library Act. On June 20, he moved for its second reading. On July 15, 1963, he moved for the third reading and voted "Yea".

Meanwhile, the Institute's members were kept in the dark of what was going on back-stage.

At the Institute Board meeting on April 9, 1965, Liss' notes of a March 19, 1965 meeting of himself, John W. Daly and Leo J. Powers with Daniel P. Coman, assistant to Cook County Board President Simon, was submitted. Vol. II, Meeting of April 9, 1965, Abs. 96-97, contains an illegible, blurred copy, inserted by the plaintiffs in support of their motion for summary judgment. A close inspection with a magnifying glass indicates Daly stated that some members were against the gift to Cook County which would, hence, require submitting any proposal to the membership; that he doubted *cy pres* were applicable. Liss harped on the need for a law suit to protect the directors for what might be illegal action, apparently, to which "Coman suggested that we should consider acting first (seizing the library under *cy pres*), and then letting the objectors take the initiative."

An Institute resolution was then passed, at its April 9, 1965 Board meeting, to file suit under *cy pres* for approval of the gift to Cook County of *all* the Institute's assets, which went beyond even what Cook County's ordinance of December 11, 1962 (F-2) asked. A special meeting of the members was then voted for June 18, 1965 for them to approve the gift, filing the suit at bar at the Institute's expense, and to dissolve the corporation. A call, under date of June 1, 1965, over the signature of Leo J. Powers, president, was then mailed (Abs. 98, Vol. II, Special Meeting, June 18, 1965 Minutes).

The said June 1, 1965 letter stated:

> *"The Chicago Law Institute, as a corporation, is governed and controlled insofar as any distribution of its assets is concerned upon liquidation, by the Illinois Statute regulating 'Not for Profit Corporations'*

and, accordingly, no distribution of its assets may be made to its members. . . . the most appropriate donee of the library collection *and its other assets is the County of Cook* and its new public law library.

. . .

". . . *it is the intention* of the Board of Managers *to submit the above plan to an appropriate Chancery Court for approval.*" (italics supplied)

The deliberate misstatements of fact and law so shocked appellant Hettleman that he formed a Committee for the Preservation of Private Control of the Chicago Law Institute and drafted a reply to the Powers' letter (Jones R. 40788, pp. 179-183). Therein the cited 1944 General Not-for-Profit Corporation Act was shown to be inapplicable, since it had never been accepted by the Institute, a condition precedent to its applicability. The plaintiffs' attorney had to admit this (Abs. 111-112, Question 3, and reply thereto). Even O'Brien, J. had to so find in his opinion (Abs. 138, top; Appendix A of this Statement, bottom of first page). This undermined the foundation of the argument that members in the Institute had no distributive rights, upon dissolution. The only corporation act in force in 1907 (Appendix F-1) provided expressly for such distributive right.

More seriously, and corroborative of the defence of conspiracy, the Committee for the Preservation of the Private Control of the Institute reply stated (what was not disclosed to the members in the call of June 1, 1965 and what was not denied at the special members' June 18, 1965 meeting) that Liss had in his file a letter, received several weeks before his meeting with Coman on March 19, 1965, from the Illinois Attorney General stating, in reply to the inquiry if the Institute ever had

accepted to come under the 1944 General Not-for-Profit Corporation Act, that there was no record of such acceptance.

To ascertain the truth of the a' priori Powers' statement, in his June 1, 1965 call, that the Institute could not continue to operate financially (when was never stated), since members would no longer pay their assessments if they could use a free, public law library, there was attached to that Committee's reply a letter of intent. The member could sign if he would prefer to continue to pay the same annual assessments. The members replied overwhelmingly they wanted no part of a public law library even if it were free. The Amended Complaint ignored this independent canvass (Abs. 4, par. 5) which the Institute's Board should have itself made but didn't. The Powers' call, moreover, did not take into account that Cook County had only a "paper" library which it would take years to build to anything like the Institute library. It took the Institute almost 100 years and an estimated $5,000,000 to buy the law books and periodicals, for overhead in shelving, and paying help to service members.

Was there force, therefore, to the Institute's Board's argument that the Institute could not withstand immediate competition from a free, public law library?

A form designating appellant Hettleman as proxy was also enclosed (Jones R. No. 40788, p. 180). At the June 18, 1965 special meeting, a total of 600 members approximately voted the complete rejection and repudiation of the Board. There were only 13 votes, those of the Board, in favor of its recommendations!

Although Cook County had, on June 17, 1965 (Jones' R. 40788, p. 148, Appendix F-5) the day before the special

meeting, passed its Ordinance appointing to the Cook County Library Advisory Board 6 members of the Institute's Board, the oral statement by John W. Daly in behalf of the Board's recommendations, at the special meeting the following day, June 18, 1965, made no mention of it. At its meeting on April 9, 1965, the Institute Board selected from among themselves only those to be on the Cook County Library Advisory Board, and did not select a representative group from among the members, to be voted on by the members, as was contemplated by the Cook County Resolution of December 11, 1962. *Allman* and *Cecchini* were among the six, and also John W. Daly, as president, Leo J. Powers and Ben Liss (Appendix F-5).

The plaintiffs' attorney was retained following the June 18, 1965 members' special meeting and was fully advised (Abs. 104).

Soon after this attorney's reply, the Institute Board held a meeting, on November 12, 1965 (Vol. II; Abs. 100-101). The plaintiffs, (Vol. II in support of their motion for summary judgment) did not properly present the November 12, 1965 minutes which are crucial. The proper presentation is in Jones' R. No. 40788, pp. 119 ff., from which the following facts appear:

The signatories were *Thomas F. Allman, Joseph R. Cecchini,* Eugene A. Tappy, William H. Schrader, Martin G. Luken, Jr., C. C. Zillman, Jr., and Raymond Canady, and John W. Daly, who served as Chairman. The minutes read:

> "Mr. John W. Daly presented for the President, Mr. Leo J. Powers, a copy of an agreement between the Chicago Law Institute and the County of Cook. A copy of the agreement follows:"

A purported tentative draft of that agreement was supposed to be submitted by the President in person, but neither he nor the draft admittedly ever showed up at the meeting. Mr. Daly sketched, in a general way, its tenor. He then requested a vote to authorize the President to execute it in behalf of the Institute. Messrs. Canady, Luken and Zillman protested that the contract itself was not before them; had not been submitted in advance of the meeting for independent study and analysis; and that they would not, consequently, expose themselves to liability. They, accordingly, voted against the Resolution. Messrs. Allman, Cecchini, Schrader and Tappy voted for it. Secretary Coghlan certified that the agreement voted on was at the meeting, *Allman and Cecchini were at the time also agents and servants of Cook County, under their appointment, by its Ordinance on June 17, 1965,* (Appendix F-5) *to the Cook County Library Advisory Board.* On November 17, 1965, Powers sent a letter (Abs. 100, Vol. II, Minutes of November 12, 1965 Meeting) to each of the Institute Board members who had been present at the November 12, 1965 meeting, attaching a copy of a draft agreement, but, not having been present thereat, misstated that Messrs. Luken, Zillman and Canady had given approval, subject to disapproval upon getting an actual copy of the contract. Zillman, on December 1, 1965, and Luken, on December 2, 1965, wrote letters to Powers (Abs. 101, Vol. II, Minutes of December 17, 1965 Meeting) protesting vehemently the distortion in the Powers' letter of November 17th, and questioned the Institute Board's right to file suit without authority of the members, after the overwhelming defeat on June 18, 1965.

Had Allman and Cecchini disqualified themselves at the November 12, 1965 meeting for conflict of interest, the

vote would have stood 2 in favor (of authorizing President Powers to execute the contract with Cook County which, in turn, authorized the institution of the suit at bar) and 3 against such authority. No legal authority thus ever vested in Powers to sign the contract.

Omitted from Vol. II by the plaintiffs, but contained in Jones' R. No. 40788, p. 130, is a copy of a purported meeting of the Institute Board on November 19, 1965, to which is attached a copy of the Agreement Powers, on November 17th, had sent to the Institute Board members, and Resolution, certified to by Secretary Coghlan that it had been passed at that November 19, 1965 Board meeting authorizing and directing the president and secretary to execute it. *There was never such meeting held,* as was later admitted at the Institute Board Meeting on February 18, 1966 (Abs. 101-102; Vol. II, Minutes of February 18, 1966).

All the foregoing was discovered in the preparation of the Jones' Motion and Amended Motion to Dismiss the Amended Complaint when the corporate records and minutes were examined in detail. As a result, Zillman, Luken, and Hettleman met Powers on February 9, 1966 (Affidavit of William Hettleman attached to Jones' Amended Motion to Dismiss the Amended complaint, R. 40788, pp. 152-156 gives a full account of that meeting). Zillman wrote Powers again on February 15, 1966 pointing out the distortions in the minutes of November 12, 1965 and November 19, 1965. The plaintiffs did not include the Zillman letter of February 15, 1966 with the minutes of February 18, 1966 of the Board, as they should have (Abs. 101-102, Vol. II, Minutes of February 18, 1966). Jones' R. 40788, pp. 164-65 does, however, contain that

Zillman letter which was attached to his Amended Motion to Dismiss the Amended complaint.

Luken's letter was attached to the Hettleman Counter-affidavit, in opposition to the plaintiffs' motion for summary judgment, which was presented to the trial court at the hearing thereon, pursuant to his statutory right to do so, (Appendix F, sec. 57(3)), but which O'Brien, J., refused to file (Hettleman & Edmunds Record No. 40603, Document No. 6, Supplemental Petition for Leave to Appeal to Illinois Supreme Court, Exhibit D). The Minutes of the Institute Board Meeting on February 18, 1966 (Vol. II) purport to be a ratification by the Institute Board, as principals, of their admittedly illegal acts, as agents, on November 12, 1965, which was urged on Donald J. O'Brien, J. in argument, in all seriousness!

Powers' above letter of November 17, 1965 to the Institute Board members present at the November 12, 1965 meeting referred to his submitting a copy of the enclosed Agreement to the assistant to the County Board President. On November 23, 1965, the County Board passed its Ordinance (Appendix F-6) authorizing the execution of the agreement by President Simon. That agreement was executed on December 6, 1965, purportedly for the Institute and Cook County. The complaint, and that agreement attached thereto as Exhibit C were filed on December 10, 1965, in the Circuit Court of Cook County, Chancery Division, as 65 CH 6863.

HOW THE CONSTITUTIONAL QUESTIONS WERE RAISED IN THE STATE COURTS.

A. In The Trial Court.

The case at bar was assigned to Cornelius Harrington, J. He disqualified himself, upon defendant Hettleman's affidavit, to which was attached the 1963 judges' report, that, prior to the expiration of the 11th decennial lease, in 1962, his threat of ouster, unless the Institute library were given to Cook County, initiated the compromise deal at the Mid-Day Club, on December 10, 1962. He then reassigned the case to Donald J. O'Brien, J., although he well knew of Judge O'Brien's connection with the subject matter from 1963 on, at least.

1. By J. Edward Jones, Intervening Defendant.

He also filed a petition for change of venue, but O'Brien, J. refused, contrary to law (1965 Ill. Rev. St., C. 146, §1), to disqualify himself, for bias or interest, and thus denied him procedural due process. Jones then filed an Amended Motion to Dismiss the Amended Complaint, under the Illinois Civil Practice Act, §48, supported by numerous records and documents, on February 15, 1966. His grounds, *inter alia,* were (Jones R. No. 40788, pp. 60-69, 125, 132-160) that the Institute was not chartered, and does not exist now, as a public or private charity, because: (1) no words of endowment, trust, trust *res,* donor or donors, settlor or settlors, or any donative intent appear in the charter, or any amendment thereto; (2) the only support the charter and by-laws provide for the Institute is by sales of aliquot ownership certifi-

cates to a professional group, lawyers in good standing (Abs. 18, 4th par.), without restriction as to race, color, nationality, or sex, upon payment of $100.00 application fee, the regular assessments, and fines, and the Executive Committee's approval of the application (Secs. 1 and 2 of the By-laws, Abs. 17) which appellees admitted, Abs. 42, par. 8 (No one, unable to pay, could use the facilities); (3) the benefits are not available *directly* to an indefinite and indeterminate number of people or class of the general public (1963 judges, report, Abs. 65, pages 14, 17, 21 of this Statement); (4) no visitatorial powers or inspection of the library or the management, by any governmental, municipal or other public agency, officials or servants, or by any trustees, are conferred; (5) the usual corporate officers are provided for (charter, §4; by-laws, §3) to be elected by the members' exercise of their personal and property right to vote, elect and to participate in the corporate affairs; (6) nor are the proceeds from the sale of stock or aliquot ownership certificates or the annual assessments to be deemed gifts, donations or unrestricted contributions by the members to The Chicago Law Institute, or to the general public, or to any class thereof, nor are they made to a trust, or charitable trust (See forms of assessment notices in Jones R. No. 40788, 178-179).

Jones contended further that the evident object of the amended complaint, and the practical effect of any decree prayed, was to dissolve the corporation, against which the members' special meeting on June 18, 1965, voted almost unanimously. The Institute was quite solvent (Pages 20, 21 of this Statement). The Illinois Attorney General had no cause of action to forfeit the charter for non-use or misuser. There was no genuine or real present, or impending, threat of the loss, dissipation or waste

of any assets, much less of all of them as alleged (Abs. 42, pars. 9 and 10), except that the Institute's officers were refusing to call the annual meetings at which assessments are to be levied (Abs. 29, By-laws, sec. 13) to support the Institute (Abs. 101, Vol. II, Minutes of December 17, 1965 contained Institute Board Resolution, as did the minutes of January 16, 1966, to defer calling the annual meeting for Friday, January 28, 1966) and were exhausting cash and pauperizing the Institute to pay about $25,000 attorney fees to maintain the colorable suit at bar.

Other Jones'. grounds were that the suit was colorable; that the prayer of the Amended complaint would deny the Institute and its members access to the courts; that the plaintiffs had no legal capacity to file the application *cy pres* since the State only, as parens patriae, could file suit to preserve a *public* charity and control the litigation; that the 1907 amendment was pursuant to the Laws of 1901, par. 2 which provided (the General Not-for Profit Corp. Act came in 1944):

> "That hereafter, whenever any corporation, not for profit, existing by virtue of any special law of this State, shall desire to . . . change the object . . . such change shall not operate as a waiver, release or forfeiture, of any of the powers, rights or privileges of such corporation granted to or secured by it under and by virtue of such special act, and all acts or parts of acts in conflict herewith are hereby repealed." (Appendix F-1)

Pars. 5-6 of Jones' Amended Motion to Dismiss the Complaint (Jones R. No. 40788, pages 64-67) recites that the establishment of Cook County within the Counties Law Libraries Act, c. 81, sec. 81, and Cook County's implementary ordinances, was part of the scheme to de-

prive the Institute, and its members, of their property, contrary to the 5th and 14th amendments to the U. S. Constitution. His motion was denied without any comment from the trial judge, Donald O'Brien, before whom that motion was argued at great length by appellants Hettleman and Jones.

2. By Black et al.

The Black et al. Answer covered pretty much the ground covered in the Jones' Amended Motion to Dismiss the Amended Complaint: Par. 9 (Abs. 56). Referring to the November 23, 1965 Cook County Ordinance authorizing the execution by Simon of Exhibit C attached to the Complaint, it stated that it was passed in collusion with the unfaithful Institute Board members to

> "accomplish a confiscation of the assets and law library unto the plaintiff belonging, without any compensation whatever, and, if consummated, would constitute a denial of due process in the taking, and deprivation of private property in violation of the 14th amendment, sec. 1, and 4th and 5th amendments to the Constitution of the U. S."

The Black et al. Answer at par. 14 (Abs. 59-61) sets out 12 counts of a bill of particulars on the alleged conspiracy between Cook County and unfaithful Institute Board members, prior to and after the members June 18, 1965 special meeting, in doing sundry things, including the passage of the 1963 amendment to the County Law Libraries Act (1965 Ill. Rev. Stat. c. 81, § 81) and the various implementary ordinances referred to in "Questions Presented" on pages 4-8 of this Statement.

Summary judgment is forbidden under Illinois, and probably in most states, where one material fact even is

put in issue since that drastic and extraordinary procedue can be used readily, as it has been in the case at bar, to deny procedural due process. Yet the Record reveals that the pleadings put in genuine issue multitudinous facts material to arriving at a sound judgment.

3. By J. Edward Jones.

After denial of Jones' Amended Motion to Dismiss the Amended Complaint, he filed unsuccessfully a Motion to Strike the affidavits in support of the Plaintiffs' motion for summary judgment, or, in the alternative, a Motion for Judgment on the Pleadings. It reviews much of the material in his Amended Motion to Dismiss the Amended Complaint (Jones' R. No. 40788, pp. 252-259), but he attacks at B-e the Cook County Implementary Ordinance of June 17, 1965 and action thereunder as state action, and, at B-g, the power which the 1963 amendment to c. 81, §81, Ill. Rev. Stat. (1965) (the Counties Law Libraries Act) has given to commit fraud, and concludes, after summarizing the efforts to deprive the Institute, and its members, of property:

> "E. The action proposed by the plaintiff, pursuant to the proposed plan set forth in the complaint, if consummated pursuant to the judgment of this or some higher court, would constitute a denial of due process of law and a deprivation of property in violation . . . of the 14th and 5th amendments to the U. S. Constitution."

4. By William Hettleman.

Appellant Hettleman presented at the hearing, on June 20, 1966, on the plaintiffs' motion for summary judgment his counter-affidavit. (*St. Louis Fire & Marine Ins. Co.* v. *Gariner,* 24 Ill. App. (2) 408, 416 (1960) sustained such

right.) After being stamped "Filed" by the Court Clerk, O'Brien, J. directed that it be marked "Void" (Doc. No. 6, Exh. D transmitted to this Court by the Ill. Supreme Court Clerk), and returned it to appellant Hettleman on the ground that he had entered an order, upon dismissal of the Jones' Amended Motion to Dismiss the Amended Complaint, for all Answers and Counteraffidavits to be filed at an earlier date. Appellants Jones and Edmunds filed their Answers timely, adopting the Black et al. Answer (Jones' R. No. 40788, p. 273) filed by their attorney Irving Breakstone who, at the time was also appellant Hettleman's attorney, prior to Breakstone's withdrawal so Hettleman could proceed *pro se*. It was unnecessary, therefore, for appellant Hettleman to file an Answer. Upon advice of Attorney Breakstone that no counteraffidavit need be filed prior to the hearing, under the Ill. C.P.A., §57(3), (Appendix F-8), to abridge which time no trial court had been given, under any authority, the right, appellant Hettleman complied with the said statute. Moreover, appellant Hettleman had been under very great distress and burden, due to his wife's having undergone surgery for the removal of a tumor from her brain the size of an orange. Loss of her mind and hearing were threatened. His constant attendance at her hospital bedside was imperative. O'Brien, J. well knew all this from the Hettleman petition, which he denied, for a week's postponement of the hearing on the plaintiffs' motion for summary judgment, so he could accompany her, air traveling in a wheel chair, to New York to consult certain specialists there, and for recuperation. His counteraffidavit comprised 8 typed, legal size pages, to which were attached 6 full exhibits, all of which took some time to assemble and prepare, especially under such adverse circumstances.

His counteraffidavit attached the affidavit of Luken, corroborative of the Zillman letter, dated February 15, 1967, also attached (Jones' R. 40788, pp. 164-165; pp. 28-29 of this Statement), as to what really transpired at the November 12, 1965 Institute Board meeting, which voted illegally the "donative" contract and the filing of a suit seeking approval thereof under *cy pres;* pointed out that there had admittedly been no meeting (Abs. 101, Vol. II, Minutes of February 18, 1966, after the suit at bar was filed on December 10, 1965) on November 19, 1965 at which the Amended complaint, par. 9 (Abs. 7), alleged "The execution of Exhibit "C" on behalf of the Institute was authorized by a resolution of the Board of Directors;" attached photocopy of the reply of John W. Daly, dated December 18, 1963, to Ben Liss' letter, dated December 11, 1963 (p. 20 of this Statement) denying the applicability of *cy pres,* and rebuking him for seeking advance approval thereof by the judges and the Attorney General.

Appellant Hettleman's counteraffidavit pointed out additional disputed facts in the proceedings, and the relationships between the alleged conspirators, to determine the truth of which required trial, and to ignore which constituted an arbitrary and unwarranted denial of pocedural due process of law, in violation of the 5th and 14th amendments to the U. S. Constitution.

B. In The Appellate Court, First District.

Three sets of defendants appealed the decree of July 13, 1966 (Abs. 131-132): (1) Black et al., represented by Irving Breakstone; (2) Hettleman and Edmunds, represented by William Hettleman; and (3) J. Edward Jones, *pro se.*

1. By Hettleman and Edmunds in No. 51619.

Black et al., on July 14, 1966, duly filed their Notice of Appeal (Abs. 133-135) to the Illinois Appellate Court, First District, docketed as No. 51,619. They duly served a copy thereof that day on the plaintiffs' attorney. They made no attempt to serve their co-defendants, Hettleman, Edmunds, and Jones, as they were not required to do so, nor the adverse parties, Cook County and the Illinois Attorney General, as Rule 34 (Appendix F-9) did require them to do.

In the climate of this case, as may be judged from its history (pp. 16-22 of this Statement), the Appellate Court, First District judges were only too eager to seize upon any excuse to dodge the constitutional questions presented by the appeals and to deny procedural due process of law. The artful plaintiffs soon provided them the "out", in a successful motion granted on September 20, 1966, to dismiss appellants Hettleman and Edmunds for an alleged non-compliance with Rule 35 (Appendix F-9). The following facts should, themselves on their face, prove that Rule 35 was wholly inapplicable and was introduced by appellees as a feigned independent and adequate, purely procedural question to bar ultimate review by this Court:

On July 15, 1966, the appellees mailed appellants Hettleman, Edmunds, and Jones an identical paper entitled "Notice of a Notice of Filing a Notice of Appeal." The plaintiffs' attorney signed it. It advised of the receipt by the plaintiffs of the Black et al. Notice of Appeal on July 14, 1966, and attached a copy. The plaintiffs claimed in their motions to dismiss, on August 19, 1966, that Rule 35 was thus brought into play, to require the appellants

to serve someone unstated, by July 25, 1966, a written intent whether the appellants would join Black et al. in their appeal, or appeal separately, although § 76(1) of the C.P.A. (Appendix F-8) provides an appellant 30 days, after the entry of a judgment, in which to file his notice of appeal in the trial court, the only jurisdictional requirement. Appellants thus had until August 12, 1966 in which to meet the jurisdictional requirement, which they did duly meet on August 12, 1966; no statute provided that the 30 days could be cut down by invoking Rule 35 or any other court rule. The Hettleman-Edmunds appeal in the Appellate Court was also docketed No. 51619 and Jones' appeal directly to the Illinois Supreme Court was docketed there as No. 40154.

The plaintiffs' motions to dismiss the appellants, in the respective courts, for alleged non-compliance with procedural rule 35, were resisted as the denial of their rights to have their appeals heard fully, because (1) Rule 35 did not authorize plaintiffs, as principals, or as Black et al. agents, any more than it authorized those aligned with them, Cook County and the Attorney General, to mail appellants the paper they did; (2) if it did, or if Black et al. had themselves mailed their Notice of an Appeal, on July 15, 1966, directly to appellants, such notice would contravene the appellants' statutory right under said C.P.A., secs. 76(1) and (2) by cutting down unauthorizedly (Appendix F-8a, section 2, page 44a) the requirement for compliance therewith from 30 days to 12 days; (3) in the latter situation, if there were authority for such mailing having the effect of cutting down the appellants' 30 days for filing a Notice of Appeal, thus bringing Rule 35 into play, the failure of Black et al. to comply with Rule 34 (Appendix F-9) by serving a copy

of their Notice of Appeal on Cook County, by July 24, 1966, was an abandonment of their appeal, as Cook County and the plaintiffs urged successfully in their November, 1966 motion before the Appellate Court to dismiss the Black et al. appeal; Rule 35 had become spent by July 25, 1966; no co-party appellants Black et al. existed then on whom to serve the alleged required notice of intent, and the plaintiffs could not stand in better shoes as agents for Black et al., for whom they evidently purported to act by mailing their paper, on July 15, 1966, to appellants; (4) the dismissals of the appellants' appeals were arbitrary, capricious, contrary to the Supreme Court's own rules 301 and 303(b) and the courts' decisions; (5) and the spirit of § 4 of the Illinois C.P.A., (Appendix F-8) and Rule 73(a) and (b) of the Federal Rules of Civil Procedure and Title II, Rules 3(a) and (d) of the Federal Rules of Appellate Procedure (Appendix F-11).

The palpable injustice *of possibly* cutting appellants' time to as little as 10 days, under Rule 35, inconsistent with C.P.A. sec. 76(1) (Appendix F-8), and in substantiation of appellants' contention that Rule 35 permitted them, in fact, 40 days (to August 22, 1966) from the entry of the July 13, 1966 decree in which to file in the trial court their Notices of Appeal (had Black et al. served their Notice of Appeal on them directly, for instance, on August 12, 1966), led the Illinois Supreme Court to revise Rule 35 tentatively before appellants' Notices of Appeal were actually filed on August 12, 1966.

On May 20, 1966, almost 3 months before appellants filed their Notices of Appeal, the Illinois Supreme Court distributed a tentative final draft of new rules

for study, comment, suggestions, etc. These rules became effective January 1, 1967, including Rule 301 (Appendix F-10) which stated that the only jurisdictional step was filing a notice of appeal, every final judgment of the circuit (trial) court in a civil case being appealable as of *right;* and including Rule 303, to replace Rule 35, which made former Rule 35 clear, and free from ambiguity or illegality. Rule 303(b) (Appendix F-10) stated that

> "If a timely notice of appeal is served by a party, any other party, within 10 days of service upon him, *or within 30 days of the entry of judgment, whichever is later,* MAY join in the appeal, appeal separately or cross appeal, by filing a Notice of Appeal."

The Appellate Court judges were, likewise, aware of this proposed clarification, or interpretation, of Rule 35. This Illinois Supreme Court interpretation of Rule 35 constituted a caveat, at least, that the filing of appellants' Notices of Appeal, on August 12, 1966, within 30 days of the entry of the July 13, 1966 decree, was within the spirit of the liberal construction sec. 4 of the C.P.A. (Appendix F-8), and provided Black et al. timely notice of the appellants' intent to appeal separately, even though Black et al. themselves had mailed their Notice of Appeal to the appellants on July 14 or 15, 1966. The appellees could have stood in no better shoes.

The appellees never showed any prejudice to any rights they may have had by any circumstances intervening in the 19 days between July 25, 1966 and August 12, 1966.

If appellant Hettleman's failure, *pro se* and as Edmunds' attorney, to comply with Rule 35 was a dereliction (despite that he did not learn of the "Notice of a Notice of Filing a Notice of Appeal" until his return to Chicago on

August 3, 1966 from a visit to his ailing wife, in the East, of which contemplated visit the appellees knew before July 15, 1966), the Appellate Court, First District, in the case of appellants Hettleman and Edmunds, and the Illinois Supreme Court, in Jones' case, meted out no punishment whatever, much less such drastic penalty as dismissal, for much worse and clearer derelictions in the following Appellate, First District, or Illinois Supreme Court, cases called to their attention: *Barbee* v. *Evans,* 220 Ill. App. 154, 159; *Chicago Cosmetic Co.* v. *City of Chicago,* 374 Ill. 384, 388; *Pieczyski* v. *Pieczyski,* 323 Ill. App. 649; *Rowan* v. *Matanky,* 348 Ill. App. 296.

In *Bradley* v. *Metropolitan Sanitary District,* 56 Ill. App. 2d 482 (First District, 1965), though the appellants admitted minor non-compliance, the motions to dismiss their appeal were denied as nit-picking, at page 489:

> "because they raise mere technicalities, and seek to avoid decisions on the merits. In *Foman* v. *Davis,* 371 U.S. 178, 181, the Court said
>
> > 'It is too late in the day and entirely contrary to the spirit of the Federal Rules of Civil Procedure for decisions on the merits to be avoided on the basis of such mere technicalities.'"

2. By Black et al. in No. 51619.

The Hettleman-Edmunds' motion of September 26, 1966 in the Appellate Court to reconsider was denied on October 4, 1966 without comment or reason. Appellant Hettleman then assisted Irving Breakstone, attorney *pro se* and for Black et al., in preparing their printed Brief and Argument which was filed in the Appellate Court on October 25, 1966, together with the Record, and the printed Abstract of Record, in No. 51619. Point IV, pages 70-72, referring to the background of the suit, summarized in the

section on Statement of the Case in this Statement, and the Black counteraffidavit in opposition to the plaintiffs' motion for summary judgment, argued that the plaintiffs were in Court with unclean hands, seeking by conspiracy with Cook County to cause, by refusing to levy assessments, the very inability of the Institute to continue financially upon which they predicated their application for *cy pres,* and that their pretensions in filing the suit at bar were (Abs. 53 a) "a pure sham, under the allegedly 'legally enforceable duty', to confiscate the Institute's assets for a public use without pay, violative of the Illinois and U.S. Constitutions."

The Outline of Points and Authorities, pages 3-5, Point IB, indicates 8 major reasons for error in the trial court's Opinion (Appendix A of this Statement; Abs. 137-139), not the least of which was the justification for the Institute Board's illegal action on November 12 or 19, 1965, after the June 18, 1965 members' special meeting, because sec. 4 of the Institute's By-Laws (Abs. 19) states the Executive Committee shall

> "exercise a general control and supervision over the affairs of the Institute, and over its officers, committees and employees." (Abs. 138, No. 3 and No. 6)

The Appellate Court was given the complete answer to the trial court's opinion that the Executive Committee could contract to sell, mortgage or give *all* the assets away of the corporation without the necessary vote of its members consenting thereto (Brief 40-48), by citing this Court in *Rogers* v. *Hill,* 289 U.S. 582, 591, that even the majority stockholders cannot authorize a gift which amounts to spoilation or waste of corporate property against the protest of a single stockholder even. To the same effect were cited *Parrott* v. *Noel,* 8 F(2) 368, 371-372; *Brayton* v.

Welch, 39 F.S. 537, 539; *McQuillan* v. *National Cash Reg.*, 27 F.S. 639, 651. Also cited to the Appellate Court were cases decided by the highest Illinois court that a Board of Directors cannot ratify its own prior illegal acts *after* suit filed, even if the members thereof own most of the corporate stock: *Klein* v. *The Pyle-National*, 289 Ill. 157, 168.

The principles of *Dartmouth College*, 4 Wheaton 518 were also called to its attention as controlling (Brief 21-27). *Dartmouth College* pointed out the distinction between public and private corporations. *Washington Home* v. *Chicago*, 157 Ill. 414, 423-425 (Brief 26-28) followed *Dartmouth College*. The Brief (pp. 50-59) demonstrated the trial court's lack of jurisdiction because the members had refused, at their June 18, 1965 special meeting, the use of the corporation's name in any suit seeking to take away its property without consent or compensation, by application to a chancellor to exercise *cy pres*, and because, on the allegations of the Amended complaint that, fearing the Institute's assets would be *wholly* lost and dissipated, the State alone, as parens patriae, must file and control the suit. There was an alleged "enforceable" duty on the plaintiffs to file the suit, a concept borrowed from general business corporation law that, upon the charge by minority stockholders that the majority stockholders were oppressing them, the directors had the enforceable duty to take legal action to protect the minority (See Hornstein, 40 Columbia L.R. 220, passim). Lack of the trial court's jurisdiction over the subject matter was demonstrated at pages 29-38 of the Brief.

The Black et al. Notice of Appeal was dismissed on December 14, 1966, without comment or reason. Thereupon, on December 29, 1966, appellants Hettleman and Edmunds filed a motion in the Appellate Court to vacate its dis-

missal order of September 20, 1966 on the ground that, the Court having evidently held that Black et al. had abandoned their appeal on July 24, 1966, as Cook County and appellees contended, Black et al. were no longer co-parties appellant on July 25, 1966 and, if Rule 35 had been properly brought into play theretofore by appellees' mailing appellants "Notice of a Notice of Filing a Notice of Appeal", Rule 35 had become spent and inapplicable. The motion of appellants Hettleman and Edmunds to vacate was denied on January 11, 1967, without any comment or reason.

3. By Hettleman and Edmunds in No. 51962.

Appellants Hettleman and Edmunds were left their right, under the C.P.A., s. 76(1), and the Illinois Supreme Court Rule 29, (Appendixes F-8, 9). These permitted a petition to the Appellate Court for leave to file their Notice of Appeal within 1 year of the entry of the decree on July 13, 1966, on the ground that they were not guilty of culpable negligence, and that their case was meritorious. Accordingly, on January 24, 1967, they attached to their petition an Abstract of Record, as required, which was that filed theretofore by Black et al., their supporting Brief, which was also that theretofore filed by Black et al. (both had been filed on October 25, 1966 in No. 51619), and their Praecipe, as required, which these appellants had, on August 22, 1966, filed with the trial court clerk for certain parts of the record to supplement the Praecipe of Black et al. in No. 51619 (appellee's motion to dismiss appellants' appeal was granted on September 20, 1966, before these parts could be sent up to the Appellate Court). The petition for leave was docketed as No. 51962.

The arguments on the merits referred to those portions of the Brief in Number 51619 which had already

been presented by Black et al. (pages 41-42, inclusive, of this Statement) and, in addition, the petition for leave proved conclusively, (supported by documentary evidence) that the 1907 amendment to sec. 2 of the Institute's charter was merely declaratory of the non-profit, net cost, completely private character of the Institute from its inception (Doc. No. 3 transmitted by the Clerk of the Illinois Supreme Court to this Court), so that *cy pres* was inapplicable, and all state statutes enacted to support *cy pres* and court proceedings thereunder were null, void, and of no legal effect. Their petition was denied on February 20, 1967, without comment or reason. An order granted their prayer, nevertheless, to adopt the Record in the trial court, the Abstract of Record, and the Brief filed by Black et al. in 51619, as corrected by appellants. They were marked "Filed" and transmitted under the Appellate Court Clerk's certificate to the Supreme Court of Illinois who transmitted them to this Court (Doc. No. 3) on the appellants' Hettleman and Edmunds appeal from No. 40603. The appellees did not *print* their Answer to the Petition, as the Supreme Court Rule 29 and the Appellate Court Rule 21 required, and as appellants Hettleman and Edmunds pointed out, but typed them; the Appellate Court paid no attention to this dereliction.

C. In The Supreme Court Of Illinois.

1. Jones had appealed the trial court's orders (dismissing his Amended Motion to dismiss the Amended complaint, denying his motion to strike the affidavits supporting the plaintiff's motion for summary judgment, and its final decree on July 13, 1966) *directly* from the trial court to the Illinois Supreme Court, in No. 40154, under the C.P.A., Section 73, and its Rule 28-1, pursuant thereto

(Appendix F-9). (See page 36 of this Statement). His affidavit, supporting his appeal and opposing appellee's request for additional record, recited that he had adopted the Black et al. Answer as part of his Answer to the Amended Complaint, but that the appellees made no reply thereto, nor did they obtain an order that their reply to Black et al. stand as their reply to his Answer.

Jones' Objections to the appellees' motion to dismiss his appeal made an extensive argument that, to apply Rule 35, constituted a denial of procedural due process. His affidavit, in support of his Objections, recited the history of the litigation, including the usurpation of authority and power by the appellees.

Before his record could be prepared according to the timely filing of his praecipe, his Notice of Appeal was dismissed, without comment or reason, on September 14, 1966.

2. *Black et al.* filed on February 3, 1967 their Petition for Leave to Appeal to the Supreme Court of Illinois from the Appellate Court final order of December 29, 1966 dismissing their appeal. The Appellate Court Clerk had been directed to send the Record there to the Supreme Court of Illinois. Attached to the Petition was the Abstract of Record in No. 51619. The Black et al. Petition presented, inter alia:

> "c. Petitioners have been deprived of their Constitutional right of appeal, of their right to a *pro tanto* distributive share, upon any final dissolution of The Chicago Law Institute, a private, but not a private or public charitable, corporation, in and to its approximately 150,000 volume internationally famous law library having a present replacement cost of approximately $2,000,000, cash and securities, the decree of the trial court, unless reversed, having approved transfer of its

said assets to a municipal corporation, Cook County, Illinois, for the use of the general public without any compensation therefor, contrary to the State and Federal Constitutions, under an erroneous application of equity's power cy pres, upon a motion for a summary judgment without a trial, despite multitudinous disputed issues of fact requiring confrontation and cross examination of affiants who presented only self-serving affidavits."

The points relied upon, and attached to the Petition, were the Points and Authorities comprising pages 3-11 of the Brief and Argument filed in the Appellate Court, on October 25, 1966, in No. 51619, by them, and as corrected by the appellants Hettleman and Edmunds' Petition for Leave to File a Notice of Appeal under Rule 29 (within 1 year of the entry of the decree on July 13, 1966), on February 20, 1967, in No. 51962 (Doc. No. 4 transmitted to this Court by the Clerk of the Illinois Supreme Court, since it was also filed by the latter there, on April 17, 1967, on their appeal). On March 28, 1967, the Supreme Court of Illinois dismissed the Black et al. Petition, without comment or reason. The Black et al. attorney, Breakstone, died soon after and no further action was taken.

3. Hettleman and Edmunds filed, on April 17, 1967, their Petition for Leave to Appeal to the Supreme Court of Illinois (Doc. No. 1 transmitted to this Court by the Clerk of the Supreme Court of Illinois), and Supplemental Petition, on May 3, 1967 (Doc. No. 6), from the February 20, 1967 order of the Illinois Appellate Court, First District, Second Division, in No. 51962, which denied leave to file a Notice of Appeal under the 1 year rule. Pursuant to that order, there were attached to the Petition for leave to appeal to the Supreme Court in No. 40603 the Record in the trial court, the Abstract of Record, as corrected,

and the Brief and Argument, as corrected, (both filed on October 25, 1966, by Black et al. in 51619) as part of the appellants (Hettleman and Edmunds) Appellate Court Record in No. 51962.

Point I, B (Doc. No. 1, pp. 3, 1-36) presented 2 substantial constitutional questions, the second of which read;

> "2. In the light of the factual background leading up to the amendment, in 1963, to Ill. Rev. Stat., chapter 81, sec. 81, extending the County Law Libraries Act to Counties of 500,000 population or over; did the Illinois Legislature intend by said amendment, and was the effect of said amendment, to amend the charter of the Chicago Law Institute to transfer the control thereof from the officers and managers of the Institute (constituting its Executive Committee) to Cook County, as the purported new trustee, or to its purported sub-trustee or agent, the Advisory Board to the proposed Cook County Law Library?"

That Petition for Leave, and the continuation thereof in Document 6, Supplemental Petition for Leave (p. 2) also discussed the violation of Art. I, sec. 10 by the implenmentary Cook County Ordinances, under the first constitutional question presented; the denial of procedural due process by the dismissal of the Hettleman-Edmunds Notice of Appeal by the Appellate Court (Doc. No. 1, Point II, pp. 3-5, 37-43) where the same subject was treated in the Petition for Leave to File a Notice of Appeal under Rule 29, and the C.P.A., sec. 76 (see page 44 of this Statement); the national importance of the constitutional questions involved (Doc. No. 1, Point I, pp. 2-3, 15-18); the lack of the trial court's jurisdiction over the subject matter (Doc. No. 1, Point III, pp. 5-6, 44-58; Doc. No. 6, pp. 3-22) and over the parties (Doc. No. 1, Point III, B, p. 6; No. 6, pp. 22-25); and the plaintiffs' failure to meet the

requirements of an application of judicial *cy pres*. (Doc. No. 1, Point IV, pp. 7-8; Doc. No. 6, pp. 30-45). The trial court's denial of due process are noted in Doc. No. 1, Point III, C and D, pp. 6-7; Doc. No. 6, pp. 25-29.

Document 12, the unsuccessful Motion to Reconsider, made the point that the *Dartmouth College* case's principles governed the case at bar, and, if the Court found that, according to them, the Institute was a private corporation, then it was immaterial if it also were a private educational and charitable corporation which appellants denied throughout. The Ill. Rev. Stat., ch. 81, sec. 81 amendment in 1963 (County Law Libraries Act) sought to remodel the Institute's Special charter of 1857 without its or its members' consent and so was unconstitutional, and, if so, Cook County could not take the Institute library, the inapplicability of *cy pres* to private property aside.

The Black et al. Petition for Leave to Appeal presented the mere skeleton outline of the Points and Authorities. That of Hettleman and Edmunds went into great detail about the reasons why the Petition should be granted. Neither approach moved the Supreme Court of Illinois to state its reasons for the record. Orders were simply denied, without comment or reason.

Doc. No. 14 of Index to Documents was an unsuccessful motion, citing chapter and verse, for the Illinois Supreme Court to certify the rationale of its order denying leave to appeal and denying reconsideration of that order, so that its *ratio decidendi* could become part of the Record.

4. On July 10, 1967, appellant Jones filed a timely petition (under the one year Rule 29 and C.P.A. sec. 76(1) for leave to file his Notice of Appeal) which stated

> "Your petitioner particularly prays that this Court will pass upon the Federal and State constitutional issues raised in this, his petition, for leave to appeal, so that, in the event of an adverse decision, he may have the proper basis for further review, if such action is deemed proper."

and prayed

> "2. That this Court pass upon all constitutional issues raised in these proceedings."

Pages 4 of his Petition noted the denial of procedural due process, in violation of the 14th amendment of the U.S. Constitution, by dismissal of his appeal under the wholly inapplicable Rule 35, as construed by the Supreme Court in a clarification thereof as Rule 303. Pages 6-16 of his Petition reviewed the facts of the conspiracy, the usurpation of power, and infringement of his constitutionally protected rights. His petition was denied, on September 14, 1967, without comment or reason, on the same day that the Court refused to issue its certificate, requested by appellants Hettleman and Edmunds, of its *ratio decidendi* in all the proceedings before it.

Order after order, after order, has been entered in all the proceedings in the Illinois appellate courts without comment or reason. Not even a brief memo appeared supporting the validity of the "donative" contract, Exhibit C attached to the Amended Complaint, for whose execution, voted *Allman* and *Cecchini*, undisclosed agents of Cook County, on November 12 or 19, 1965, as 2 of the 4 votes against, although they were, on November 12 or 19, 1965, acting also in a fiduciary capacity, as members of the Institute's Board, to its members and were bound to respect the mandate by them, on June 18, 1965, to the Institute Board not to execute a "donative" contract with Cook

County, not to use the Institute's name in any suit to approve such contract, and not to seek the corporation's dissolution.

We submit that the Notices of Appeal were dismissed arbitrarily, contrary to the courts' own rules and decisions, to avoid confrontation of the constitutional questions involved and presented, or else that, considering that no independent and adequate non-federal procedural question was truly involved, they decided that the constitutional questions presented to them were without merit.

THE QUESTIONS ARE SUBSTANTIAL.

The questions presented by this appeal are substantial in that they raise directly fundamental constitutional issues with respect of the use by counties, which are but quasi-municipalities, of legislatures to amend charters of private corporations without their consent, as forbidden by the contract and due process clauses of the U.S. Constitution, in order to invoke *cy pres* to permit such quasi-municipalities to take private property for a public use without compensation, as a substitute for condemnation procedures.

There were listed in the 1963 edition of *Directory of Special Libraries* (Gale Research Company, Detroit, Mich.) 10,000 special libraries (a 2d edition to be published soon will list over 13,000) where information may be sought on over 1200 different subjects. Legal information in law books, court reports, etc. is available at about 910 such libraries in the U.S., the next relative subjects being medi-

cine at 672 libraries and engineering at 331 libraries.[1] Most of these libraries are *privately* owned. Additionally, there are all sorts of recreational libraries in private clubs, lodges, private homes and offices, etc.

What of the libraries in *non-public* elementary and secondary schools, *privately* owned colleges and universities, or *law* libraries in *law* schools, *other than state controlled*, whether university affiliated or not, large law firms, in large corporations, a more recent development and in large office buildings, also a recent development? Will the case at bar, if the decree of the trial court is not reversed, set a dangerous precedent, where political motives may lead to the appropriation of *private* libraries on the theory that all are educational, and hence charitable, under the strained construction contended for by appellees that 43 Elizabeth, c. 4, covers them, and where *cy pres* would be invoked (in anticipation of possible future financial inability to continue to operate them) to transfer title to their libraries to some *public* corporation? (The Harvard Law School law library, now the largest in the world, had fallen into sad desuetude till Langdell revived it.) The social import of this problem, it will soon be demonstrated, far overshadows the private rights of The Chicago Law Institute and its members, however important they are and however they are entitled to the protection of this Court against infringement of their federally guaranteed rights.

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[1] Subjects on which information may be had in at least 100 libraries are: chemistry at 291; electronics 273; education 241; religion and theology 223; art 211; science and technology 170; business and business administration 164; music 164; metallurgy 135; pharmacy 119; physics 116; geography 114; economics 107; petroleum 106; newspaper 105.

A. Other Than Law Libraries.

A detailed analysis is contained in Appendix G to support these conclusions therefrom:

1. The trend is growing for *state* control of our college and university libraries; e.g. 57% of them in the Fifth Circuit are state owned; 56.64% in the Ninth; and 60% in the Tenth.

2. *Privately* owned educational and charitable 1255 college and university libraries, smaller generally than those publicly owned, have a tremendous stake in preserving their *private* property and their autonomy through this Court's ever-watchful protection.

B. Law Libraries.

A detailed analysis is contained in Appendix H to support these conclusions therefrom:

1. Of 358 law libraries, containing 13,383,000 volumes, 15% (54), which are owned publicly, contain 35% of these volumes, indicating a wide dispersal of *small, privately* owned law libraries, unable, in the main, to defend themselves.

2. The trend is likewise growing for *state* control of law school libraries. The 54 *publicly* owned law school law libraries comprise 40% of the 135 law school law libraries in the U.S. 46, or 85.18%, are located in the six Circuits southwest and west of the Mississippi River.

3. The law libraries of private, professional membership service corporations, housed in county courthouses or publicly owned realty, are especially vulnerable.

The Chicago Law Institute does not stand alone as a private membership professional service corporation whose library is housed in a county courthouse building. The

Law Library Association of St. Louis, Missouri, 1300 Civil Courts Building, St. Louis, Missouri, incorporated in 1838, obtains its sole support from members' annual assessments. It has a lease arrangement similar to that of the Institute, paying for space to house its 80,000 volumes by giving free service to all judges and public officials.

The Duluth Bar Library, incorporated in 1899, 515 St. Louis County Court House, Duluth, Minnesota, owns its 40,000 volumes under a similar lease arrangement, but the County owns the bookstacks, tables and chairs and pays the Librarian.

The Berks County Law Library, incorporated 1859, houses its 20M volumes in the Reading, Pa. courthouse under an arrangement similar to that of Duluth.

It would appear that the Philadelphia Bar Association library of 155,000 volumes, is located in the City Hall, and the Baltimore Bar Library of 95,000 volumes is housed in the courthouse, under arrangements similar to that of the Institute, but more information is being awaited on the former.

The Social Law Library of Boston, Mass., incorporated in 1804, houses its 134,000 volumes in 1200 Court House, supported by annual assessments on its lawyer-members, who alone may use its books. The space and some money are provided in consideration of being the depository of Supreme Court records, briefs, etc.

Information is being awaited from others who may wish to ask leave to file briefs as amicus curiae, if review is granted.

Do some or many of the *privately* owned law school, law firm, corporation law-libraries, and the 672 *privately* owned liberal art college libraries in the United States, as

a result of the Illinois legislative and court *cy pres* technique face a lurking danger which they do not even suspect as yet, and will not realize until pounced upon? This Court's decision may forewarn them.

C. The Dangerous Library Gap.

A phenomenon of modern times is the "knowledge explosion", as enrollments in all sorts of schools have soared and will continue to do so. The *functional* library is a very important part of the educational apparatus in schools at the elementary, secondary, collegiate, university, and professional levels. The shortage of libraries in all these has become so acute, and threatens to become so bad, that the U.S. Office of Educational Services Branch of the U.S. Dept. of Health, Education and Welfare, caused to be made a national inventory of library needs in the U.S. The results were published in Chicago, in 1965, by the American Library Association. Page 1 and Chart B, at p. 8, thereof indicate that, whereas the enrollments were 40.2 million in public, and 6.7 million in *non-public,* elementary and secondary schools, in the fall, 1963, the total may jump to 55.4 million by 1975. The general population, which has doubled from 1915 to 1965, and stood at 193 million in 1963 (half the net growth being in the 5-19 year age group), is expected to reach 245 million by 1980.

The estimates in numbers of volumes and their cost of acquisition plus servicing, to meet the urgent need, and ALA book collection standards, are simply astronomical. The data is so inadequate on correctional, medical and special libraries that the American Correctional Association and American Hospital and Institutional Division of the ALA could not even assess their needs in comparative tabular form. For example, the national shortage in the *public* schools, state controlled colleges and universities,

and in the *public* libraries, is over 390,000,000 volumes which, to buy, process and put on the shelves, would cost $2,557,000,000, plus the cost of librarian and staff services, plus the cost of keeping such libraries up to the ALA standards (See Table 3, p. 6). The shortage in the colleges and universities alone is 55,000,000 volumes, to cost $497,000,000 (Chart C, p. 20).

President Johnson noted, in his educational message to Congress, on January 12, 1955, which led to the enactment of an Educational Act that year, that 70% of *public* elementary schools had no libraries.

The problem is aggravated by the rising costs of library materials. For example, data from R. R. Bowker & Co., N. Y., showed an increase in the average cost of a *law book* from $7.59 in 1961 to $9.96 in 1964; and in the average cost of a *law periodical* from $6.28 to $7.27 for the same period. Art, technical, medical, etc. books rose likewise during such period.

The above 1965 ALA library inventory Report (Table 3, p. 22) shows that, whereas the Index of Serial Services, by category, 1961-1964, for such combined services rose from 39.80 (1957-59) to 54.93 (1964), the index for *law* rose from 28.46 to 46.21 for the same period.

The above 1965 ALA elementary and secondary school library inventory Report (pp. 26-28) estimates it will take 12½ years, at the 1964 rate of expenditures, to fill the gap in the *public* schools served by centralized libraries.[1]

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[1] The Number and Percentage of Public and Non-public School Pupils With, and Without, Centralized School Libraries, in 50 states and District of Columbia:

No. Pupils		% With	% Without
Public Schools	36,092,998	71.7%	28.3%
Non-public Schools	5,116,411	62.8%	37.2%
14,020 non-public school plants		55.4%	44.6%

Of 1900 some colleges and universities, only 129 have libraries with 300,000 or more volumes, for a total of 118,662,145 volumes. 1355 colleges have libraries of less than 300,000 volumes, and 1084 of these colleges do not meet ALA library standards. Of 591 junior colleges, 537 do not meet ALA library standards.

Will governmental local and state officials, as the trend toward state control of law school libraries grows, be more inclined to slant instruction in law to suit their predelictions or ends? If so, the technique provided by the case at bar may permit many politicians to "take-over" *private* law school libraries, especially those which may lack the means to defend themselves adequately in the law courts. Similarly, the pressure to fill the gap in libraries in the *publicly* owned schools at various levels may induce politicians to use the Cook County technique to take *private* school libraries at various levels under *cy pres* as a substitute for condemnation. We may witness growing socialization, in this manner, of the libraries of many *private* institutions, unless this Court will preserve and protect *such private* property.

Even Chief Justice Richardson's opinion holding *Dartmouth College* a public or civil corporation, prefaced it with this statement (1 N.H. 111, 114):

> ". . . if a *private* right be thus infringed today, and that infringement be sanctioned by a judicial decision tomorrow, there will be next day a precedent for the violation of the rights of every man in the community; and so long as that precedent is followed, the constitution will be, in fact, to a certain extent repealed."

DARTMOUTH COLLEGE CONTROLS THIS CASE.

The argument of the appellees followed the main line of the N.H. defense against the action of trover brought by the trustees of Dartmouth College. This Court discredited it in crushing separate opinions.

Although a much more complicated case, the *Dartmouth College* factual pattern bears strong similarity to the case at bar: (1) It had political overtones (4 Beveridge, *Life of John Marshall*, ch. v, The Dartmouth College Case, pp. 226-231) as did the case at bar (Abs. 66, third and fourth pars. from top) which motivated the introduction of the amendatory acts in the New Hampshire and Illinois legislatures; (2) These acts sought to remodel the respective corporations on the ground that they were public corporations and hence, it was argued, their charters were not "contracts" within the meaning of the contract clause of the U. S. Constitution, and so no constitutionally federally protected rights were infringed by those acts, and others implementing them.

The appellees have harped constantly on the theory that, upon a fair construction of its charter, originally and as amended, the Institute was an educational, and hence a charitable, corporation without stating if it was a private, or a public, charitable corporation. They realize fully that *Dartmouth College,* which was held to be a private corporation and its property private, although it was a private charity available to a select group only, would defeat the application for equity *cy pres,* or, if

they argued the Institute to be a public charitable corporation whose benefits were available to all residents of the City of Chicago and the County of Cook (regardless of their inability to pay the $100 application fee and the annual assessments), they would be defeated for lack of capacity to sue, since legal title to public property is held by the State, for the people as beneficiaries, and the State alone may legally file an application for *cy pres* (if there is a threat of the total loss or dissipation of that public property), to protect that public property and must control the litigation, according to the decisions in Illinois (*Smith* v. *Thompson,* 266 Ill. App. 165; *Kerner, Atty. Gen.* v. *Thompson,* 293 Ill. App. 454; *Courtney* v. *Wilson,* 327 Ill. App. 231, 243; *National Sculpture* v. *Art Inst.,* 9 Ill. App. (2) 473 (1956); *Wesley Greene* v. *Art Inst.,* 16 Ill. App. (2) 85, 90 (1958); *Newberry* v. *Blatchford,* 106 Ill. 586, 596-97; and *Peo.* v. *Braucher,* 258 Ill. 604) and most jurisdictions (*Jackson* v. *Phillips,* 96 Mass. 539, 578 (1867), opinion by later Mr. Justice Gray of this Court) which was not done in the case at bar.

Webster's extended argument (pages 551-600) for the trustees of Dartmouth College was adopted virtually by the members of the Court, except Mr. Justice Duvall. Posing the general question whether the N.H. Acts were valid and binding on its trustees, without their acceptance or consent, and reciting the facts chronologically at pages 552-554, he concluded, at pages 555-557:

> ". . . if it be contended that the effect of these acts was not *entirely* to abolish the old corporation, yet it is manifest that they impair and invade the rights, property and powers of the trustees, under the charter, as a corporation, and the legal rights, privileges, and immunities which belong to them as indi-

vidual members of the corporation. . . . If, either as a corporation, or as individuals, they have any legal rights, this forcible intrusion (the modern phrase is "muscling in") of others violates those rights, as manifestly as an entire and complete ouster and dispossession. These acts alter the whole constitution of the corporation; they affect the rights of the whole body, as a corporation, and the rights of the individuals who compose it; they revoke corporate powers and franchises; they alienate and transfer the property of the college to other (specifying in what particulars) . . . the argument on which these acts have been hitherto defended goes altogether on the ground that this is such a corporation, as the legislature may abolish at pleasure, and *that its members have no rights, liberties, franchises, property or privileges, which the Legislature may not revoke, annul, alienate or transfer to others, whenever it sees fit,*" (italics supplied)

In the case at bar, the 1963 amendment to the County Law Libraries Act (Appendix F-3, p. 41a) does not make reference, of course, specifically to the alleged Cook County-Institute deal on December 10, 1962 (p. 18 this Statement), but it followed the earlier Cook County ordinance of December 11, 1962 almost literally, confined it to Illinois counties of over 500,000 population under which Cook County alone could qualify, and was intended to qualify (Abs. 68) and made the Act effective upon the Cook County Board's implementary ordinance of September 30, 1963, notifying the Cook County Clerk that it desired to start a law library. The 1963 amendment, in effect, incorporated by reference almost the prearranged scheme to accept the Institute's library, if donated voluntarily, or to seize it by colorable court action, if the Institute members refused, and diminished the Institute's 15

man Executive Committee to 9 members on the Cook County Library Advisory Board, on which 6 Institute Board members would continue to serve, with 2 members appointed on recommendation of the Cook County Judges, members of the Cook County Advisory Board appointed thereto by Cook County, and the 9th being the Deputy Court Commissioner of Cook County. The Institute's members could no longer elect their Executive Committee and the Executive Committee could no longer fill vacancies. Cook County was vested with such powers.

Webster argued, at pages 558-561, citing *Calder* v. *Bull*, 3 Dall. 386 (April Term, 1798), that it is not the exercise of a legislative power, if the object and effect is to take away from one rights, property and franchises, and grant them to another. After citing authorities, he concluded, at p. 561:

> "It cannot be pretended that the legislature, as successor to the king in this part of his prerogative, has any power to revoke, vacate or alter this charter. If, therefore, the legislature has not this power, by any specific grant contained in the constitution; nor as included in its ordinary legislative powers; nor by reason of its succession to the prerogatives of the crown in this particular, on what ground would the authority to pass these acts rest, *even if there were no special prohibitory clauses in the constitution, and the bill of rights?*" (italics supplied).

Webster then, analyzing the Dartmouth College charter, distinguished between public, business and eleemosynary corporations, according to 1 Bl. Com. 471, at pages 563 and 569:

> *"They are founded by private persons, and on private property. The public cannot be charitable in*

these institutions. It is not the money of the public, but of private persons, which is dispensed. It may be public, that is, general, in its uses and advantages; and the state may very laudably add contributions of its own to the funds; *but it is still private in the tenure of the property,* and in the right of administering funds."

and at pages 571-2 (Note how closely Mr. Justice Story's opinion at 698, middle of page, to 701 follows and expands this):

"*It makes no difference that this property is to be holden and administered, and these franchises exercised for the purpose of diffusing learning.* No principle and no case establishes any such distinction. The public may be benefited by the use of this property; but this does not change the nature of the property, or the rights of the owners. *The object of the charter may be public good; so it is in all other corporations;* and this would as well justify the resumption or violation of the grant as in any other case as in this. In the case of an advowson, the use is public, and *the right cannot be turned to any private benefit or emolument.* It is, nevertheless, a legal private right, and the property of the owner, as emphatically as a freehold. The rights and privileges of trustees, visitors or governors of incorporated colleges stand on the same foundation. They are so considered, both by Lord Holt and Lord Hardwicke. *Phillips* v. *Bury; Green* v. *Rutherford.* See also 2 Bl. Com. 21.

"*To contend that the rights of the plaintiffs may be taken away, because they derive from them NO PECUNIARY* benefit, or private emolument, or because they cannot be transmitted to their heirs, or would not be assets to pay their debts takes an expressly narrow view of the subject. . . . It cannot be necessary to say more in refutation of the idea

> that there cannot be a legal interest, or ownership in anything which does not yield a pecuniary profit, as if the law regarded no rights but the rights of money, or of visible tangible property (as the right to vote, in which no voter has a particular personal interest, but which he may exercise at his own discretion). The exercise of this right directly and very materially affects the public much more so than the exercise of the privileges of a trustee of this college —1 or a few votes may be decisive. *Yet the public might not take away the right of suffrage or impair it.*"

In the case at bar under the Institute's charter and by-laws (Abs. 12, sec. 3 of charter; 31, sec. 17) the certificates, representing whatever interest each member may have in the Institute, have, both before and after the 1907 amendments, and since 1858, been bought, sold, bequeathed, and inherited.

Mr. Justice Washington made an independent approach, in discussing the nature of the contract created by the grant of a charter, spelling out the State's obligations not to reassert the right to grant the franchise to another, not to impair it (p. 658), adding:

> "There is also an implied contract that the founder of a private charity, or his heirs, or other persons appointed by him for that purpose, shall have the right to visit, and to govern the corporation, of which he is the acknowledged founder and patron, *and also that, in case of its dissolution, the reversionary right of the founder to the property, with which he had endowed, should be preserved inviolate.*" (italics supplied).

Mr. Chief Justice Marshall stated (p. 630) that all parties agreed that the nature of the corporation must be

determined from a construction of the charter (Abs. 138), and concluded that the charter created a private corporation, prefacing his analysis of the State's contract with the perficient founders (p. 630 to bottom of page), 633-634, and 638:

> "Those who are no longer interested in the property may yet retain such an interest in the preservation of their own arrangements, as to have a right to insist that those arrangements should be held sacred. Or, if they themselves have disappeared, it becomes a subject of serious and anxious inquiry, whether *those to whom they have legally empowered to represent them forever* (the Institute charter says they are their associates and successors) *may not assert all the rights which they possessed while in being.*
>
> . . .
>
> "Dartmouth College is really endowed by private individuals who have bestowed their funds for the propagation of the Christian religion among the Indians, and for the promotion of piety and learning generally. . . . From these funds, the salaries of the tutors are drawn; and these salaries lessen the expense of education to the students. It is, then, an eleemosynary (1 Bl. Com. 471) corporation *and, so far as respects its funds, a private corporation.* . . .
>
> "The character of civil institutions grows out of the manner they are formed and the objects therefor, and not out of their incorporation. The same institutions, created for the same objects, though not incorporated, would be public institutions, and, of course, be controllable by the legislature. The incorporating act neither gives, nor prevents, this control. *Neither, in reason, can the incorporating act change the character of a private eleemosynary institution.*"

Mr. Justice Story, at the bottom of page 671, added to this:

> "When a corporation is said, at the bar, to be public, it is not merely meant that the *whole* community may be the proper objects of the bounty, but that the government have the sole right, as trustees of the public interests, to regulate, control and direct the corporation, and its funds and franchises, at its own good will and pleasure. Now such an authority does not exist in the government, except where the corporation is, in the strictest sense, public; that is where its *whole* interests and franchises are the *exclusive* property and domain of the government itself."

Indeed, N. H. admitted (p. 602) if a charter creates artificial persons, for private purposes, the corporation is private, but it argued that the education of youth and the encouragement of the arts and sciences is one of the most important objects of civil government, a governmental function, to carry on which the charter was granted, and so Dartmouth College was a public corporation, and its charter was not a contract protected by the contract clause of the U. S. Constitution.

Chief Justice Richardson, in 1 N.H. at 115-117 defined both kinds of corporations, but held the College was not formed for the benefit of the incorporators, as would be true of library corporations (p. 124-5):

> "In the case of corporations, where all the benefit derived from them consists in the privileges incident to membership, *as in incorporated library companies*, it may be otherwise. But in the property of *public* corporations, there is no private beneficial interest that can be divested."

Proceeding from colleges to professional organizations, taking a cue from Chief Judge Richardson, investigation reveals they have been held in England to be for MUTUAL

benefit and hence private, and henee devises to them forever have been held to violate the Mortmain Act and the Rule against Perpetuities: In *Carne* v. *Long*, 2 DeG, F&J 75, 79 (63 Engl. Ch., 1860); In re *Clark's Trust*, L.R. 1 Ch. Div. 497, 500; *Brown* v. *Dale*, L.R. 9 Ch. Div. 78; *In re Dutton's Will*, 4 Exch. Div. L.R. 54, 57; *In re Pervost* v. *Barclay's Bank*, 2 Ch. Div. L.R. 383, 387-88; *Society of Writers*, 14 A.C. (Court of Sessions) 34, 2 Tax Cas. 257; Forrests' Case, 15 A.C. 334, 3 Tax Case. 117, wherein the Civil Engineers Society was compared by Lord Watson to the Inns of Court and the Faculty of Advocates in Scotland; *Young* v. *Bristol*, K.B. Div. 718, L.R. (1944).

In the United States, the best summary of the nature of such organizations, including libraries, is to be found in Scott, *Trusts* (2d ed.), sec. 376, at pp. 2727-28:

> "Where a trust inures to the benefit of private individuals, although the benefits are not pecuniary, the trust is not charitable. . . . *A trust for the benefit of a library privately owned by a group of individuals and conducted for the benefit of the owners is NOT a charitable trust.*"

SUMMATION.

Wheelock's private funds started Dartmouth College. Hence it was a private corporation, tho it later received land from New Hampshire and Vermont. The Chicago Law Institute was founded by the exchange of law books for stock therein. It has not since received a dime from the City, State or County. It was created for the self-improvement and direct mutual benefit to its members

socially, intellectually, and professionally on a severely restricted basis. It is not even a private charity!

The case at bar was quite well summarized by Mr. Justice Story, at pages 668-69:

> "If, therefore, the foundation be private, though under the charter of the government, the corporation is private, however extensive the uses may be to which it is devoted, either by the bounty of the founder, or the nature and objects of the institution. . . . This is the unequivocal doctrine of the authorities; and cannot be shaken but by undermining the most solid foundations of the common law. *Philips* v. *Bury*, 1 Ld. Ray. 5, 9. . . .
>
> "It was, indeed, supposed at the argument that if the uses of an eleemosynary corporation be for *general* charity, this alone would constitute it a public corporation. But the law is certainly not so. To be sure, in a certain sense, every charity which is extensive in its reach, may be called a *public* charity, in contradistinction to a charity embracing but a few definite objects. . . . So it would be, if the endowment, instead of being vested in a corporation, were assigned to a private trustee; yet, in such case, no one would imagine that the trust ceased to be private, or the funds became public property. That a mere act of incorporation will not change the charity from a private to a public one, is most distinctly asserted in the authorities. . . . The fact, then, that the charity is public is no proof that the corporation is also public; and, consequently, the argument, so far as it proceeds on this foundation, falls to the ground. If, indeed, the argument were correct, it would follow that almost every hospital and college would be a public corporation; a doctrine utterly irreconcilable with the whole current of decisions since the time of Lord Coke."

CONCLUSION.

Immersed in these disturbing perplexities, we submit that this case presents substantial federal questions which are of large social significance in the library world, and that they merit the fullest consideration by this Court.

Respectfully submitted,

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Of Counsel:
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J. EDWARD JONES.

APPENDIX A

(Opinion of Judge O'Brien)

After carefully listening to extended arguments and careful study, the court is of the opinion that the real questions to be decided are questions of law.

The first question is: What is the legal status of the Chicago Law Institute? After having made that determination, the next question is: Does the (illegible) Petition apply?

The Chicago Law Institute was incorporated by special act of the Illinois Legislature in 1857. Section 2 of the original charter provides: "The object and intention of this incorporation is the library purposes, the collection of legal opinions, the arrangement of [illegible] the formation of a law library in the City of Chicago in the County of Cook." Section 3 provides, among other things, that the [illegible] and library shall be divided into shares which shall be deemed personal property.

Subsequent to this, on April 30, 1877, [illegible] charter was amended. Section 2 was amended to read as amended by adding, after the words "the object and intention of this corporation" the words "to act for [illegible] profit" and then adding, after the words "Library of Chicago", the words "to be maintained, [illegible] and carried on by the members of said corporation, and all shares of said corporation shall be considered as [illegible] and not real estate." (Emphasis added.)

The Illinois Legislature has passed a general [illegible] Corporation Act (Chap. 32, Sec. 157, Ill. Rev. Stat.) which has been revised and amended from time to time. Under the provisions of this statute

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"The first question is: What is the legal status of the Chicago Law Institute? After having made that determination, the next question is: Does the CyPres Doctrine apply?

"The Chicago Law Institute was incorporated by special act of the Illinois Legislature in 1857. Section 2 of the original charter provides: 'The object and intention of this corporation is for literary purposes—the cultivation of legal science; the advancement of jurisprudence; the formation of a law library in the City of Chicago in the County of Cook.' Section 3 provides, among other things, that 'the property in said library shall be divided into shares which shall be deemed personal property.'

"Subsequent to this, on April 20, 1907, the original charter was amended. More specifically, Section 2 was amended by adding, after the words 'the object and intention of this corporation' the words 'is not for pecuniary profit' and then adding, after the words 'County of Cook', the words 'to be conducted, maintained and carried on by the members of said corporation, and *all shares of said corporation shall be considered as certificates of membership in said corporation.*' [Emphasis added.]

"The Illinois Legislature has passed a general Not-For-Profit-Corporation Act, (Chap. 32, Sec. 163, Ill. Rev.Stat.) which has been revised and amended from time to time. Under the provisions of this statute,

not-for-profit-corporations such as the Chicago Law Institute may elect to accept the general Not-For-Profit-Corporation Act, and upon so doing, would be bound by its terms, including provisions for dissolution. The Chicago Law Institute has not elected to accept this Act and is not bound by its terms. Not being under the general Not-For-Profit-Corporation Act, its status must be determined from its own charter and by-laws and conduct of its affairs in relation to the general rules of law.

"By clear and unequivocal language, by the amendment of April 20, 1907 of the original charter, not only is the object and intention of the corporation established as being not-for-profit for 'literary purposes, the cultivation of legal science, the advancement of jurisprudence' but the entire concept of the meaning and intention as to the significance of the ownership of 'shares' is changed so that henceforth 'shares' are mere indicia of membership in said corporation, not an indicia of ownership of an interest in the assets, if any, of said corporation.

"It is, therefore, the opinion of this court that:

"1—The Chicago Law Institute comes within the definition of a charitable, and educational corporation;

"2—that its members, by owning a 'share' have a certificate of membership in the corporation entitling them to certain privileges under the corporation by-laws, but does not give the members an interest in the assets of the corporation or the right to share in the distribution of any assets upon termination of the corporation;

"3—that the Executive Committee, under the by-laws (Sec. 4) is charged with the authority and responsibility 'to exercise a general control and supervision over the affairs of the Institute';

"4—that pursuant to its authority and responsibility it conducted a long and intensive study and investigation as to the future and welfare of the Chicago Law Institute;

"5—that the CyPres Doctrine is appropriately invoked here;

"6—that in the fulfillment of its duty and the exercise of its authority, and pursuant to the use of Cy Pres, the Executive Committee entered into the contract (Plaintiff's Exhibit 'C' of the Complaint) and submitted same to this Court for approval;

"7—the Court approves said contract.

"Therefore, Plaintiff's motion for judgment is allowed."

~~Respectfully submitted,~~

~~Irvin Dreamstone~~

~~Attorney for Appellants~~

United States of America

APPENDIX B

State of Illinois } ss.
Supreme Court }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eighth day of May in the year of our Lord, one thousand nine hundred and sixty-seven, within and for the State of Illinois.

PRESENT: ROY J. SOLFISBURG, JR., CHIEF JUSTICE

JUSTICE WALTER V. SCHAEFER — JUSTICE RAY L. KLINGBIEL

JUSTICE BYRON O. HOUSE — JUSTICE ROBERT C. UNDERWOOD

JUSTICE THOMAS E. KLUCZYNSKI — JUSTICE DANIEL P. WARD

WILLIAM G. CLARK, ATTORNEY GENERAL

ROBERT C. MILLS, MARSHAL

ATTEST: MRS. EARLE BENJAMIN SHAROY, CLERK

BE IT REMEMBERED, that, to-wit: on the 20th day of June, A.D. 1967, the same being one of the days of the Term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Chicago Law Institute, a corporation, et al.,
Respondents

No. 40603 vs.

The County of Cook, a body corporate and politic,
Respondent

William Hettleman, et al.,
Petitioners

Petition for Leave to Appeal from Appellate Court First District 65 - Ch- 6863 51962

And now, on this day, the Court having duly considered the motion by petitioners for reconsideration of order denying petition for leave to appeal, and being now fully advised of and concerning the premises;

IT IS HEREBY ORDERED that the motion by petitioners for reconsideration of order denying petition for leave to appeal be, and the same is, denied.

United States of America

State of Illinois } ss.
Supreme Court }

APPENDIX C

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eleventh day of September in the year of our Lord, one thousand nine hundred and sixty-seven, within and for the State of Illinois.

PRESENT: ROY J. SOLFISBURG, JR., CHIEF JUSTICE

JUSTICE WALTER V. SCHAEFER — JUSTICE RAY I. KLINGBIEL

JUSTICE BYRON O. HOUSE — JUSTICE ROBERT C. UNDERWOOD

JUSTICE THOMAS E. KLUCZYNSKI — JUSTICE DANIEL P. WARD

WILLIAM C. CLARK, ATTORNEY GENERAL

ROBERT G. MILLS, MARSHAL

ATTEST: MRS. EARLE BENJAMIN SEARCY, CLERK

BE IT REMEMBERED, that, to-wit: on the 14th day of September, A.D. 1967, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Chicago Law Institute, a corporation, et al.,
Appellees

No. 40788 vs.

The County of Cook, a body corporate and politic, et al.,
Appellees

J. Edward Jones,
Appellant

Appeal from Circuit Court Cook County 65 - Ch - 6863

And now, on this day, the Court having duly considered the motion by appellant for leave to file Notice of Appeal, and being now fully advised of and concerning the premises;

IT IS HEREBY ORDERED that the motion by appellant for leave to file Notice of Appeal be, and the same is, denied.

LIBRARIES of COLLEGES & UNIVERSITIES by Ciruits & Control

CIRCUIT	Total No.		No. Controlled Privately		% of Total	CIRCUIT TOTAL	Publ. Contr.	%
Dist. of Col.	19		18		94.74			
First Circuit								
Maine	16		10					
Mass.	78		60					
N.H.	11		8					
Vt.	11		6					
P. Rico	4	120	3	87	72.50			
Second Circuit								
Conn.	26		17					
N.Y.	125		113					
R.I.	10	161	8	138	85.71			
Third								
Del.	3		2					
N.J.	29		20					
Pa.	94	126	83	105	83.33			
Fourth								
Md.	35		18					
N.C.	58		42					
S.C.	22		16					
Va.	34		23					
W.Va.	14	163	5	104	63.80			

Source: U.S. Dept. Hlth, Educat. & Welf. Library Statistics, Coll. & Un. 1963-64. U.S. Print Off. 1965

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LIBRARIES of COLLEGES & UNIVERSITIES by Circuits & Control P.2

CIRCUIT	Total No.		Pvt'ly Contr.		%
Fifth					
Ala.	20		10		
Fla.	40		13		
Ga.	42		18		
La.	19		9		
Miss.	23		9		
Tex.	84	228	39	98	43.00
Sixth					
Ky.	28		22		
Mich.	47		26		
Oh.	52		46		
Tenn.	38	165	33	127	77.00
Seventh					
Ill.	81		56		
Ind.	39		34		
Wis.	36	156	21	111	71.15
Eighth					
Ark.	13		9		
Ia.	42		27		
Minn.	34		24		
Mo.	51		38		
Neb.	19		11		
N.D.	13		3		
S.D.	12	184	6	118	64.13

CIRCUIT	TOTAL No.	Pvt'l. Control	%

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LIBRARIES of COLLEGES & UNIVERSITIES by Circuits & Control

CIRCUIT	TOTAL NO.	P'v'te Contr.	%
Ninth			
Ariz.	6	2	
Calif	147	63	
Hawaii	3	2	
Idaho	9	2	
Mont.	9	3	
Ore.	26	15	
Wash.	26	11	
	226	98	43.36
Tenth			
Colo.	21	8	
Kans.	31	17	
N.Mex.	7	1	
Okla.	26	10	
Utah	5	2	
Wyo.	5	0	
	95	38	40.00

RECAPITULATION

CIRCUIT	TOTAL NO.	P'v'te Contr.	%
D.C.	19	18	94.74
1st	120	87	72.50
2nd	161	138	85.71
3rd	126	105	83.33
4th	163	104	63.80
5th	228	98	43.00%
6th	165	127	77.00
7th	156	111	71.15
8th	184	118	64.13
9th	226	98	43.36
10th	95	38	40.00
TOTAL	1643	1042	63.42 %

TABLE I. Libraries of Colleges & Universities

	Type Inst.	OWNED Publicly	OWNED Privately	TOTAL	% of Type PRIVATELY owned	Publicly owned	TOTAL %
1.	University	90	60	150	40 %	60.00%	100.00
2.	Lib. Arts Coll.	88	672	760	89.42%	11.58%	100.00
3.	Teachers "	166	29	195	14.86%	85.14%	100.00
4.	Technical Sch.	26	27	53	50.94%	49.06%	100.00
5.	Theolog. "	0	166	166	100.00%	00.00%	100.00
6.	Other Prof. "	10	103	113	91.15%	8.85%	100.00
7.	Jr. Colleges	328	198	526	37.64%	62.36%	100.00
	TOTAL	708	1255	1963	63.93%	36.07%	100.00

1.	UNIVERSITY	150	LIBS.	FOUND	7.64%	OF TOTAL (1963)	UNIVERSITY & COLL.	LIBRARIES.		
2.	LIBERAL ARTS	760	"	"	38.75%	"	"	"	"	"
3.	TEACHERS	195	"	"	9.93%	"	"	"	"	"
4.	TECHNICAL	53	"	"	2.70%	"	"	"	"	"
5.	THEOLOGICAL	166	"	"	8.45%	"	"	"	"	"
6.	Other PROFESS'L	133	"	"	5.75%	"	"	"	"	"
7.	JR. COLLEGES	526	"	"	26.80%	"	"	"	"	"
	1963 TOTAL				100.00%	"	"	"	"	"

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TABLE II. No. VOLUMES IN LIBRARIES in Each Type Institution

(Rounded to nearest million except as indicated)

	Type Inst.	OWNED Publicly	OWNED Privately	TOTAL	% of Type OWNED Privately	% of Type OWNED Publicly	TOTAL %
1.	University	60	52	112	46.43%	53.57%	100.00 "
2.	Lib. Arts Coll.	9	45	54	83.33%	16.67%	100.00 "
3.	Teachers "	16	3	19	15.79%	84.21%	100.00 "
4.	Technical Schls.	2	1	3	33.34%	66.67%	100.00 "
5.	Theolog. "	0	8	8	100.00%	00.00%	100.00 "
6.	Other Profes. "	1	2	3	66.66%	33.34%	100.00 "
7.	Jr. Colleges	4	3	7	42.86%	57.14%	100.00 "
	TOTAL	92	114	206	55.34%	44.66%	100.00 "

I	UNIVERSITY	112 mill vols =	54.37% of TOTAL VOLS (206 mill.) in Univs. & Colleges	
II	LIBERAL ARTS	54 " " =	26.21% " " " " " " " "	
III	TEACHERS	19 " " =	9.22% " " " " " " " "	
IV	TECHNICAL	3 " " =	1.46% " " " " " " " "	
V	THEOLOGICAL	8 " " =	3.88% " " " " " " " "	
VI	Other PROFESS'L	3 " " =	1.46% " " " " " " " "	
VII	JR. COLLEGES	7 " " =	3.40% " " " " " " " "	
	TOTAL	206 " " =	100.00% " " " " " " " "	

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TABLE III. SPENT FOR BOOKS IN LIBRARIES in EACH TYPE INSTITUTION

(Rounded to nearest million, except as indicated)

Type Inst.	OWNED Publicly*	OWNED Privately*	SPENT FOR BOOKS Publicly	SPENT FOR BOOKS Privately	As % of OPER COSTS Publicly	As % of OPER COSTS Privately
1. UNIVERSITY	61	39	20	11	32.79	28.25
2. LIB. ARTS Coll.	14	32	4	10	28.57	31.25
3. TEACHERS "	14	948M	4	367M	28.57	38.73
4. TECHNIC. SCHS.	3	3	925M	1	30.83	33.33
5. THEOLOGIC. "	0	4	0	1 250M	00	23.00
6. OTHER PROF. "	731M	1,853	244M	571M	33.38	30.82
7. JR. COLLEGES	8 150	2 271	2,346M	650M	28.79	24.22
	101	83	31,500	24,500	31.49	30.00

* Total Operating Costs

TABLE IV. ENROLLMENT IN PUBLIC & PRIVATE UNIVERSITIES & COLLEGES

	NO REPORTS Publicly	NO REPORTS Privately	NO REPORTS TOTAL	% of Total Each Class Private	% of Total Each Class Public	% of Total Each Class TOTAL %	% of Total Rep'tg (1437) Private	% of Total Rep'tg (1437) Public
A Under 500	21	416	437	95.19 %	4.81 %	100.00	28.95 %	1.42 %
B 500-999	46	293	339	86.43 %	13.57 %	100.00	23.60 %	3.20 %
C 1000-2499	108	239	347	68.88 %	31.13 %	100.00	16.63 %	7.52 %
D 2500-4999	101	47	148	31.76 %	68.24 %	100.00	3.27 %	7.03 %
E 5000-9999	51	40	91	43.91 %	56.09 %	100.00	2.79 %	3.55 %
F 10,000 or Over	53	22	75	29.33 %	70.67 %	100.00	1.53 %	3.67 %
TOTAL REPORTING		1057	1437	73.56 %	[illegible] %	100.00		

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COMPARISON BETWEEN CONTROLS OVER LAW SCHOOL LIBRARIES, ETC.

(Arranged by Circuits. No. of Libraries in each by figure. M. vols in parenthesis)

	Law Schools	Law Firms	Corp. Law Lib.	TOTAL Libraries	TOTAL Volumes M	STATE & Municipal Libraries	STATE & Municipal Vols. M
Dist. of Col.	5 (363 M)	4 (41)	2 (?)	11	404		
First Cir.	7 (1,376 ..)	4 (43)	5 (23)	16	1,447	3	95 ..
Second ..	9 (1,091 ..)	46 (656)	24 (170)	79	1,917	2	107 ..
Third ..	7 (619 ..)	8 (69)	12 (110)	27	798	1	150 ..
Fourth ..	5 (251 ..)	0	3 (45)	8	296	6	477 ..
Fifth ..	10 (616 ..)	13 (159)	5 (60)	28	835	9	959 ..
Sixth ..	8 (428 ..)	9 (113)	9 (69)	26	610	10	984 ..
Seventh ..	9 (752 ..)	14 (157)	12 (74)	35	983	2	283 ..
Eighth ..	5 (288 ..)	7 (36)	5 (36)	17	360	7	787 ..
Ninth ..	13 (544 ..)	21 (183)	13 (104)	47	831	7	839 ..
Tenth ..	3 (111 ..)	0	7 (98)	10	199	7	417 ..
	81 (6,439 ..)	126 (1457)	97 (789)	304	8,685 M	54	4,698 ..

GEOGRAPHICAL DISTRIBUTION of LAW LIBRARIES IN LAW SCHOOLS

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First Cir.	3	5.56	2	4.76	5	12.82	10	7.41
Second "	2	3.70	2	4.76	7	17.95	11	8.15
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Seventh "	2	3.70	5	11.91	4	10.25	11	8.15
Eighth "	7	12.96	2	4.76	3	7.69	12	8.89
Ninth "	7	12.96	7	16.16	6	15.38	20	14.83
Tenth "	7	12.96	3	7.14	0	0	10	7.40
TOTAL	54	100.00%	42	100.00%	39	100.00%	135	100.00%
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(Arranged by Circuits. No. of Libraries in each by figure. No. of Vols. in Parenthesis)

Control: State 1	Munic. 2	Cath. 3	Bapt. 4	Luth. 5	Method. 6	Presb. 7	Non-Sectar. 8	Tot. Libs	Tot. Vols.	Non-Sect.
D.C.		2(185M)			1(36M)		2(142)	5	363M.	
First Cir.	3(95)	2(89)					4(1262)	9	1,446.	1(25)
Second "	2(107)	2(117)					5(849)	9	1,073.	2(125)
Third "	1(150)	3(211)			1(50)		3(358)	8	769.	
Fourth "	6(477)		2(67)		1(134)		2(50)	11	728.	
Fifth "	9(559)	2(64)	4(128)		2(188)		2(236)	18	1,175.	
Sixth "	6(791)	4(193)	1(50)		1(27)	1(35)	2(186)	15	1,282.	3(130)
Seventh "	2(283)	4(204)	1(35)				2(441)	9	963.	2(72)
Eighth "	7(787)	2(118)					2(133)	11	1,038.	1(37)
Ninth "	7(839)	5(206)			2(37)		4(270)	18	1,352.	2(31)
Tenth "	6(389)	1(28)			2(77)	1(34)	0	10	528.	
TOTAL	49(4,470)	22(1,123)	7(245)		10(551)	1(34)	28(3927)	124	10,717M	11(420)

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GRAND TOTAL 135 11,137M vols

I. LAW SCHOOL LIBRARIES

A. UNIVERSITY AFFILIATED

Figs. in parentheses after name of Law School indicate number of vols. - rounded to nearest 1000

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DISTRICT of Columbia

Cath. U.(45)
Georgetown (44)
Amer. U.(36) (Wash. Coll. Law)
Geo. Wash.(70)
Howard U.(12)

FIRST Circuit

MAINE

P'tland U. of Me.(35)

MASS.

Amherst ... Mass.(10)

Boston

Brighton — Boston Coll.(68)

Boston U.(61)
Suffolk U.(31)

	1.	2.	3.	4.	5.	6.	7.	8.
Cambridge								Harvard U(1,081)
Medford								Tufts(Fletcher)(83)
PUERTO RICO								
Ponce						Cath.U.(21)		
Rio Piedras	"	"	P.R(50)					
SECOND Circuit								
CONN.								
New Haven								Yale U. (410)
W. Hartford	"	"	Conn(49)					
NEW YORK								
Brklyn						St.John's(25)		
Buffalo		St.e-4(C)(58)						
Ithaca								Cornell U. (68)
N.Y.C.						Fordham(92)		Columbia U.(450)
								N.Y.U. (235)
Syracuse								Syracuse U(96)

16a

	1.	2.	3.	4.	5.	6.	7.	8
THIRD Circuit								
N.J.								
Camden	Rutgers(150)							
Newark			Seton Hall(55)					
PA.								
Carlisle						Dickinson(50)		
Phila.								Temple U.(109) U. of Pa. (182)
Pittsburgh			Duquesne(38)					U. of Pittsbgh(67)
Villanova			Villanova(118)					
FOURTH Cicuit								
MD								
Balto	U. of Md(45)							U. of Balto(15)

	1.	2.	3.	4.	5.	6.	7.	8.
VA.								
Charlottesville	U. of Va (165)							
Lexington								Wash & Lee (35)
Richmond			U. of Richmond (53)					
Wmsburgh	Coll. of Wm & Mary (31)							
W. VA.								
Morgantn	W. Va. U. (71)							
N. C.								
Chapel Hill	U. of N.C. (104)							
Durham						Duke U. (134)		
Winston Salem			Wake Forest (34)					
S. C.								
Columbia	" S.C. (55)							
FIFTH Circuit								
ALA. - Birmingham			Samford U. (36)					
University	" Ala (54)							

18a

	1	2	3	4	5	6	7	8
FLA.								
Coral Gables								U. of Miami (114)
St. Petersburg					Stetson U(50)			
Tallahassee				Fla. St U(26)				
GA.								
Athens		U. of Ga(56)						
Atlanta						Emory U(59)		
Macon					Mercer U(40)			
MISS.								
University				Miss(44)				
LA.								
Baton Rouge				La. St U(135)				
N. Orleans				(Southern U.(33))	Loyola(32)			Tulane U.(122)
TEXAS								
Austin		U. of Tex(135)						
Dallas						So. Meth U(29)		

19a

1. 2. 3. 4. 5. 6. 7. 8.

Houston Tex.South(26)
U.of Houston(50)
San Antonio St.Mary's(U32)
Waco Baylor U(52)

SIXTH Circuit

KY.
Lexington U.of Ky(85)
Louisville U.of Louisville(52)

TENN.
Knoxville " "Tenn(59)
Memphis Memph.State U(26)
Nashville Vanderbilt U(81)

OHIO
Ada Oh.North(35)
Akron U.of Akron(45)
Cincinnati " "Cincian(49)

20 P

	1.	2.	3.	4.	5.	6.	7.	8.
Cleveland								Western Reserve(105)
Columbus		Oh.St.U(218)			Franklin(27)			
Toledo			U.of Toledo(47)					
MICH.								
Ann Arbor		U.of Mich(342)						
Detroit		Wayne U.(62)		U.of Detroit(50)				

SEVENTH Circuit

IND.								
Bloomington		Ind.U.(110)						
Notre Dame			N.Dame U.(65)					
Valparaiso					Valparaiso(35)			
ILL.								
Champaign		U.of Ill(480)						
Chicago			DePaul U.(54)					Northwestern U.(233)
			Loyola U.(42)					U.of Chicago (208)

21a

	1.	2.	3.	4.	5.	6.	7.	8.
WISC.								
Madison	U. of Wisc (103)							
Milwaukee			Marquette U (53)					
EIGHTH Circuit								
IA.								
Des Moines	St. U. of Ia (130)							
Ia City							Drake U. (33)	
MINN.								
M'polis	U. of Minn (290)							
MO.								
Columbia	" Mo. (110)							
St Louis			St. Louis U (70)				Washington U (100)	
NEB.								
Lincoln	" Neb. (144)							
Omaha			Creighton (48)					

21a

	1.	2.	3.	4.	5.	6.	7.	8.
ARK.								
Fayetteville	U. of Ark (42)							
N.D.								
Grand Forks	" " N.D. (43)							
S.D.								
Vermillion	" " S.D. (28)							
NINTH Circuit								
ARIZ.								
Tucson	U. of Ariz (45)							
CALIF.								
Los Angeles	U. of Calif (413 - all bindes)	Loyola (70)					U. of So. Calif. (103)	
San Diego		U. of San Diego (30)						
" Francisco	" " "	" San Francisco (36)					Calif. Western (30)	
Santa Clara		" Santa Clara (45)					Lincoln U (San Francisco)	
Stanford							Stanford U (115)	
Sacramento						U. of Pacific (14)		

	1.	2.	3.	4.	5.	6.	7.	8.
ORE.								
Eugene	U. of Ore(62)							
Salem						Willamette U(23)		
WASH.								
Seattle	" " Wash(68)							
Spokane					Gonzaga(25)			
MONT.								
Missoula	Mont. St U.(46)							
IDAHO								
Moscow	U. of Idaho(31)							
HAWAII								
Honolulu	" " Hawaii(47)							
TENTH	Circuit							
WYO.								
Laramie	U. of Wyo(32)							

240

	1.	2.	3.	4.	5.	6.	7.	8.
UTAH								
Salt Lk. City	Un. of Utah (70)							
COLO.								
Boulder	"	"	Colo (85)					
Denver						U. of Denver (55)		
OKLA.								
Norman	"	"	Okla (55)					
Okla. City						Okla. City U (22)		
Tulsa						U. of Tulsa (34)		
KAS.								
Lawrence	"	"	Kas (80)					
Topeka			Washburn U (28)					
N. MEX.								
Albuquerque	"	"	N. Mexico (63)					

B UNAFFILIATED WITH ANY UNIVERSITY

FIRST Circuit								
MASS.								
Boston						Portia L.S. (25)		

252

1. 2. 3. 4. 5. 6. 7. 8.

SECOND Circuit
NEW YORK
Brooklyn — Brooklyn L.S.(55)
New York City — New York L.S.(70)
SIXTH Circuit
OHIO- Cincinnati — Salmon P. Chase L.S.(25)
Cleveland — Cleve'd-Marshall L.S.(70)
MICHIGAN
Detroit — Detroit Coll. of Law (40)
SEVENTH Circuit
ILLINOIS
Chicago — Chicago-Kent Coll. of Law (40)
John Marshall Law Sch. (32)
EIGHTH Circuit
MINNESOTA
St. Paul — Wm. Mitchell Coll. of Law (37)
NINTH Circuit
CALIFORNIA
San Francisco — Golden Gate L.S.(19)
San Francisco L.S.(12)

26a

LAW FIRM LAW LIBRARIES
(Arranged by Circuits)
(No. of Vols. Within Parenthesis)

DISTRICT of COLUMBIA

Alvord & Alvord (10)
Arnold, FORTAS & Porter (8)
Covington & Burling (18)
Wilmer, Cutler & Pickering (5)

FIRST CIRCUIT

Massachusetts
Boston

Bingham, Dana & Gould (12)
Choate, Hall & Head (12)
Hale & Dorr (11)
Herrick, Smith, Donald, Farley & Ketchum (8)

SECOND CIRCUIT

New York
New York City

1. Bingham, Endar, Jones & Houston (12)
2. Breed, Abbott & Morgan (13)
3. Cadwalader, Wickersham & Taft (15)
4. Cahill, Gordon, Reindel & Ohl (25)
5. Carter, Ledyard & Milburn (12)
6. Chadbourne, Park, Whiteside, & Wolff (14)
7. Cleary, Gottlieb, Friendly & Steen (10)
8. Conboy, Hewitt, O'Brien & Boardman (16)
9. Cravath, Swaine & Moore (24)
10. Curtis, Mallet-Prevost, Colt & Mosle (25)
11. Davies, Hardy & Schenck (15)
12. Davis, Polk, Wardwell, Sunderland & Kiendl (42)
13. Debevoise, Plimpton & Gates (17)
14. Dewey, Ballantine, Bushby, Palmer & Wood (24)
15. Donovan, Leisure, Newton & Irvine (17)
16. Fish, Richardson & Neave (5)
17. Haight, Gardner, Poor & Havens (8)
18. Hawkins, Delafield & Wood (7)

Appendix E-2A

N.Y.C. (Cont.)

19. HUGHES, Hubbard, Blair & Reed (8)
20. Kaye, Scholer, Fierman, Hays & Handler (20)
21. LeBoeuf, Lamb & Leiby (10)
22. Lord, Day & Lord (16)
23. McLanahan, Merritt & Ingraham (9)
24. Meyer, Kissell, Matz & Seward (7)
25. Mitchell, Capron, Marsh, Angelo & Long

26. Milbank, Tweed, Hadley & McCloy (18)
27. Nixon, Mudge, Rose, Guthrie & Alexander (14)
28. Parker, Duryee, Benjamin, Zunino & Malone (6)
29. Paul, Weiss, Rifkind, Wharton & Garrison (8)
30. Pennie, Edmonds, Morton, Taylor & Adams (16)
31. Proskauer, Rose, Goetz, & Mendelsohn (7)

32. Reid & Priest (12)
33. Root, Barrett, Cohen, Knapp & Smith (15)
34. Rosenman, Colin, Kaye, Petschek & Freund (9)
35. Royall, Koegal & Rogers (15)

36. Shearman & Sterling (35)
37. Simpson, Thacher & Bartlett (17)
38. Skadden, Arps, Slate, Meagher & Flom (5)
39. Strasser, Spiegelberg, Fried & Frank (8)
40. Sullivan & Cromwell (18)
41. Symmes, Fish & Harmer (5)

42. White & Case (20)
43. Whitman, Ransom & Coulson (7)
44. Willkie, Farr, Gallagher, Walton & Fitzgibbon (30)
45. Winthrop, Stimson, Putnam & Roberts (15)

Rochester

Nixon, Hargrave, Devans & Doyle (9)

THIRD CIRCUIT

N.J.

Newark

Pitney, Hardin & Kipp

Appendix E - 3A

PENNA.

Philadelphia

Ballard, Spahr, Andrews & Ingersoll (10)
Montgomery, McCracken, Walker & Rhoads (8)
Morgan, Lewis & Bockius (16)
Pepper, Hamilton & Scheetz (10)
Schnader, Harrison, Segal & Lewis (8)

Pittsburgh

Reed, Smith, Shaw & McClay (11)
Kirkpatrick, Pomeroy, Lockhart & Johnson (6)

FIFTH CIRCUIT

ALABAMA
Birmingham

Martin, Balch, Bingham & Hawthorne (12)

FLORIDA
Miami
Blackwell, Walker & Gray (6)
Brigham, Smith & Forbes (8)
Fowler, White, Gillam, Hinkey & Trenard
Nichols, Gaither, Beckham, Gleason & Spence (7)
Smathers & Thompson (5)
Walton, Lanthoff, Schroeder, Atkins, Carson & Hahl (20)

St. Petersburg

Mann, Harrison & Stone

MISSISSIPPI
Jackson

Wells, Thomas & Wells (6)

LOUISIANA
New Orleans
Deutsch, Kerrigan & Stiles (13)

Appendix F-4A

TEXAS

Dallas

Carrington, Johnson & Stephens (10)
Locke, Purnell, Boyen, Laney & Neely (50)

Houston

Baker, Botts, Shepherd, Thorp, Knight (22)

SIXTH CIRCUIT

OHIO

Cincinnati

Dinsmore, Shohl, Barrett, Coats & Deupree (10)

Cleveland

Arter, Hadden, Wykoff & Van Duze (15)
Baker, Hostetler & Patterson (20)
Jones, Day, Cockley & Reavis (18)
Squire, Sanders & Dempsey (18)
Thompson, Hine & Floy

Toledo

Fuller, Seney, Henry & Hodges (12)
Marshall, Melhorn, Bloch & Belt (20)

MICHIGAN

Detroit

Butzel, Eamon, Long (13)

SEVENTH CIRCUIT

ILLINOIS

Chicago

1. Baker, McKenzie & Hightower (11)
2. Bell, Boyd, Lloyd & Haddad (5)

3. Chapman & Cutler (11)
4. Gardner, Carter, Douglas & Chilgren
5. Kirkland, Ellis, Hodson, Chaffetz & Masters (23)
6. Lord, Bissell & Brook (8)
7. Mayer, Friedlich, Spiess, Tierney, Brown & Platt (25)
8. Raymond, Mayer, Jenner & Block (12)
9. Ross, Hardies, O'Keefe, Babcock & McDugal (24)
10. Seyfarth, Shaw, Fairweather & Geraldson (7)
11. Sidley, Austin, Burgess & Smith (12)
12. Stevenson, Conaghan, Hackbert, Rooks & Pitts (10)
13. Winston, Strawn, Smith & Patterson (9)

INDIANA

Indianapolis

Barnes, Hickman, Pantzer & Boyd (12)

EIGHTH CIRCUIT

MINNESOTA

Minneapolis

Dorsey, Owen

Saint Paul

Briggs & Morgan (10)
Faricy, Moore, Costello & Hart (5)
Oppenheimer

MISSOURI

Kansas City

Lathrop, Righter, Gordon & Parker (9)
Morrison, Hecker, Cozer & Morrison (7)

Saint Louis

Lewis, Rice, Tucker, Allen & Chubb (5)

NINTH CIRCUIT

CALIFORNIA

Fresno

Thomas, Snell, Jamison, Russell, Wms, & Aperger

Los Angeles

Gibson, Dunn & Crutch (16)
Kindel & Anderson (9)
Latham & Watkins
Loeb & Loeb (8)
MaCutcheon, Block, Verleger & Shea (7)

Oakland

Fitzgerald, Abbott, & Beardsley (5)

San Diego

Luce, Forward, Hamilton & Scripps (7)

San Francisco

Bancroft, Avery & McAllister
Cushing, Cullinan, Hancock & Rothert (9)
McCutcheon, Doyle, Browne, Traut (17)
Morrison, Foerster, Holloway, Clinton & Clark (18)
Orrick, Dahlquist, Herrington & Sutcliffe (14)
Pillsbury, Madison & Sutro (30)

Santa Maria

Clare, Bushman & Baldwin

OREGON
Portland

King, Miller, Anderson, Nash & Yerkes (11)

WASHINGTON
Seattle

Preston, Thorgrimson, Horowitz, Starin & Ellis (8)
Schuepp, Rector, Doolittle & Krug (14)

Spokane

Gaiser, Stoeve & L (10)

Appendix E - 1B

LARGER CORPORATE LAW LIBRARIES

(Arranged by Circuits)
(No. Published Figs. On Vols.)
(except as indicated)

DISTRICT of COLUMBIA

Air Transport Assn. of America (11)
Potomac Electric Co.

FIRST CIRCUIT

Massachusetts

Boston
John Hancock Mutual Life Ins. Co. (15)
Liberty Mutual INS. Co. (8)

Gardner
Nat'l Furniture & Traffic C

Lexington
Raytheon

Springfield
Mass. Mutual Life Ins. Co.

SECOND CIRCUIT

Vermont

Montpelier
National Life Ins. Co. (13)

Connecticut

Hartford
Conn. Gen'l Life Ins. Co.
Conn. Mutual Life Ins. Co.
Travelers Ins. Co. (12)

NEW YORK

Brooklyn
Amer. Law Book Co.

New York City
Amer. Meta Climax Co.
Amer. Tel & Tel. Co.
Bender (Matthew) & Co.

C.I.T. Financial Corp.
Columbia Gas System
Equitable Life Insurance Co. (14)
Esso Standard Eastern, Inc. (3)
International Nickel Co. (2)
International Tel & Tel. Co. (6)
Metropolitan Life Ins. Co. of N.Y. (22)
Mutual Life Ins. Co of N.Y. (31)
New York Central R.R. Co. (20)
New York Life Ins. Co. (24)
New York Tel. Co. (14)
Olin Mathiessen Chemical Corp.
Shell Oil Co. (9)
Teachers Ins. Co.
Internat'l Business Mach. Corp.

Rye
Continental Baking Co.

THIRD CIRCUIT

Delaware
Wilmington

E.I.DuPont de Nemours & Co. (12)
Hercules Powder Co. (5)

New Jersey
Bloomfield

Schering Corp. (20)

Newark

American Ins. Co.
New Jersey Bell Tel. Co. (6)
Prudential Ins. Co. (35)

Rahway

Merck & Co. (6)

PENNSYLVANIA
Bethlehem

Bethlehem Steel Co.

Lancaster
Armstrong Cork Co.

Philadelphia
Penn Mutual Life Ins. Co. (6)

Pittsburgh
U.S. Steel Co. (13)
Pittsburgh Plate Glass Co. (7)

FOURTH CIRCUIT

Maryland

Baltimore
Fidelity & Deposit Co. of Md. (22)

Virginia

Norfolk
Seaboard Airline R.R. Co. (8)
Reynolds Metal Co. (Richmond, Va) (15)

FIFTH CIRCUIT

Florida

Jacksonville
Atlantic Coast Line R.R. Co. (10)

Texas

Houston
Gulf Oil Corp. (13)
Humble Oil & Refining Co. (30)
Schlumberger-Well Survey Co.
Tenn Gas Transm. Co. (Tenneco) (7)

SIXTH CIRCUIT

Ohio

Akron
Goodyear Tire & Rubber Co (9)

Cincinnati
General Electric Co. (8)

Michigan

Appendix E -4B

Detroit
Chesapeake & Ohio Rwy. Co. (10)
Ford Motor Co.
General Motors Corp. (26)
United Auto Workers Internat'l

Jackson
Consumers Power Co. (9)

Kalamazoo
Upjohn Co.

Midland
Dow Chemical Co. (7)

SEVENTH CIRCUIT

Illinois

Bloomington
State Farm Mutual Auto Ins. Co. (11)

Chicago - Amer. Oil Corp. (8)
Chicago Title & Trust Co. (8)
Lumberman's Mutual Casualty Co. (10)
Vapor Corp.
Armour Corp.

Evanston
Washington National Ins. Co. (8)

Moline
Deere & Co. (6)
N. Chgo. Abbott Labs.

Northlake
Automatic Electric Co.

Indiana

Fort Wayne
Lincoln National Life Ins. Co. (8)

Wisconsin

Milwaukee
Northwest. Mutual Life Ins. Co. (15)

Appendix E – 5B

EIGHTH CIRCUIT

Minneapolis, Minn.

Carpill, Inc. (8)
Prudential Life Ins. Co., Northwest Office (6)
Soo Line R.R. (9)

Saint Paul, Minn.

Minn. Mfg. & Mining (7)

Saint Louis, Missouri

Gen'l Amer. Life Ins. Co. (6)

NINTH CIRCUIT

California

Fullerton

Beekman Inst.

Los Angeles

Occidental Life Ins. Co. (7)
Richfield Oil Corp. (7)
Southern Calif. Gas Co. (10)
Union Oil Co. (5)

San Francisco

Bank of America (10)
California Research Corp.
The Fund Americas Cos. (8)
Pacific Gas & Electric Co. (17)
Pacific Tel. & Tel. Co. (16)

Santa Maria - Douglas Aircraft Co (4)

Montana

Butte

Anaconda Copper Co. (20)

Oregon - Portland - Union Pacific RR

TENTH CIRCUIT

Colorado Springs, Colo.

Shepard's Citations, Inc. (50)

Denver, Colo.

Great Western Sugar Co.

Oklahoma

Bartlesville
Cities Service Oil Co (15)
Phillips Petroleum Corp. (13)

Tulsa
Pan Amer. Petroleum Corp.
Sunray DX Oil Corp. (10)
Shell Oil Corp. (10)

OFFICE BUILDING LIBRARIES
(Fees charged lawyers & tenants)

SECOND CIRCUIT
New York

N.Y.C.
Lincoln Bldg.

FOURTH CIRCUIT
South Carolina

Charlotte
Charlotte Law Library Bldg (15)

SEVENTH CIRCUIT
Illinois

Chicago (14)
Field Building

EIGHTH CIRCUIT
Arkansas

Fort Smith
Atkinson Improvement Co. (18)

TENTH CIRCUIT
Colorado - Denver
American Nat'l Bk. Bldg (12)
Symes Bldg (53)

APPENDIX F.

Constitutional Provisions, Statutes And Ordinances Involved.

1. Illinois Corporation Act of 1871-1872 (Hurd's Rev. Stats., Ill. Laws, 1912 ed., p. 565), relating to not-for-profit corporations:

"Sec. 33. No dividend or distribution of the property of such corporation . . . shall be made until all debts are fully paid, and then only upon its final dissolution and surrender of organization and name; nor shall any *distribution* be *made* except *by a vote of a majority of the members.*" (italics supplied)

"Sec. 34. Any such corporation . . . may change its articles . . ., in the manner prescribed by their own rules; but no such change shall be of legal effect, until a certificate thereof, under the seal of such corporation . . . shall be filed in the office of the secretary of state, and recorded in the office of the recorder of deeds in which the original certificate was recorded."

An Act, approved April 24, 1901, in relation to "Corporations Not-for Profit Under Special Charters (Hurd's Rev. Stats., Ill. Laws, 1912 ed., p. 566):

"Par. 2. That hereafter, whenever any corporation, not for pecuniary profit, existing by virtue of any special law of this State, shall desire to avail itself of the right to . . . *enlarge or change the object for which it was formed, as now authorized,* or as may be hereafter authorized, *by general law,* SUCH CHANGE SHALL NOT OPERATE AS A WAIVER, RELEASE OR FORFEITURE OF ANY OF THE POWERS, RIGHTS OR PRIVILEGES OF SUCH CORPORATION GRANTED TO OR SECURED BY IT UNDER AND BY VIRTUE OF SUCH

SPECIAL ACT, AND ALL ACTS OR PARTS OF ACTS IN CONFLICT HEREWITH ARE HEREBY REPEALED." (italics supplied).

2. *Resolution by Board of Commissioners of Cook Co.*, Printed in its Journal of Proceedings December 11, 1962:

"WHEREAS, the Public Building Commission of Chicago has recommended that the County of Cook establish a PUBLIC law library in the new Civic Center; and

"Whereas, The Chicago Law Institute has been asked to donate its library collection to the proposed Cook County Law Library; and

"Whereas, on November 30, 1962, the President of the Board of Commissioners of Cook County, in a letter to the President of the Chicago Law Institute, submitted the following proposal:

1. The name of the law library shall be the Chicago Law Institute Library, thus preserving traditions respected by all the members of the Bar.
2. The law library shall be available to all members of the bar AND to THE PUBLIC generally.
3. An advisory board of nine members, composed of lawyers admitted to practice before the Supreme Court of the State of Illinois, shall be established. The Deputy Court Administrator of Cook County shall be a member, two-thirds of the members shall be named initially by the MEMBERSHIP of the Chicago Law Institute, and the JUDGES of the Circuit Court of Cook County shall elect the other two members. The advisory board shall establish the policy for the operation and maintenance of the law library, which shall be directed by a professional law librarian.
4. Withdrawal privileges shall be extended to all lawyers admitted to practice before the Supreme Court of Illinois and to those members of the public demonstrating financial responsibility.

5. Cook County shall assume ownership of the library collection of the Chicago Law Institute PRIOR to its being moved to the Civic Center.

"NOW, THEREFORE, BE IT RESOLVED, that the Board of Commissioners of Cook County concur in the proposal of the President submitted to the Chicago Law Institute on November 30, 1962; and BE IT FURTHER RESOLVED that, if it is NOT feasible for the Chicago Law Institute to move its library collection to the new Civic Center, that it is the INTENTION of the Board of Commissioners of Cook County to allow the Chicago Law Institute to REMAIN IN THE SAME LOCATION WITHIN THE COUNTY BUILDING." (italics supplied).

3. *The Laws of the Illinois Legislature for 1963*, p. 2441, sec. 1 amended as of August 6, 1963, as the result of the introduction and sponsorship, on May 8, 1963 of House Bill 1199 by Senator Donald J. O'Brien, spokesman for the Chairman of the Public Buildings Commission of Chicago (the Mayor of Chicago), The County Law Libraries Act, 1965 Ill. Rev. Stats., ch. 81, sec. 81, to read as follows:

"The county board of any county may establish and maintain a county law library, to be located in any county building at the county seat of government. The term 'county building' shall include premises leased by the county from a public building commission created pursuant to the Public Building Commission Act, approved July 5, 1955, as amended.

"The facilities of such library shall be FREELY available to all licensed Illinois attorneys, judges, . . . and to ALL MEMBERS OF THE PUBLIC. . . .

"Each such clerk shall commence such charges and collections upon receipt of written notice from the chairman of such county board that the board has acted under the provisions of this Act to establish and maintain such a law library.

"Such fees . . . shall be remitted by such clerks monthly to the county treasurer, and by him retained in a special fund designated as the County Law Library Fund . . . in any county having a population of more than 500,000 (counties of 500,000 or less only came under the Act prior to the Amendment in H.B. 1199) inhabitants, the county board shall order disbursements from such fund, and *such county board may appoint a library committee of not less than 9 members* who, by MAJORITY VOTE, may recommend to such county board as to disbursements of such fund and the operation of such library." (italics supplied).

4. *Resolution by Board of Commissioners of Cook County,* Printed in its Journal of Proceedings for September 30, 1963, authorizing the President to notify the Clerk of Court of its action to come under the County Law Library Act, as amended, above.

5. *Resolution by Board of Commissioners of Cook County,* Printed in its Journal of Proceedings for June 17, 1965, at page 1937:

"June 17, 1965

To the Honorable, the Members of the Board of Commissioners of Cook County.

Members:

Pursuant to authority vested in me by law, I hereby appoint *Thomas F. Allman*; Raymond Canady; *Joseph R. Cecchini*; John W. Daly; Louis J. Gilliberto; Ben Liss; Leo J. Powers; John W. Tuohy; Milton P. Webster to serve as members of the Advisory Board of the Cook County Law Library.

I urge the concurrence of the Cook County Board.

Respectfully submitted,
SEYMOUR SIMON,
President.

"Commissioner Wilson moved that the recommendation be concurred in.

Yeas: Bobrytzke, Bonk, Dolezal, Dunne, Erickson, Fulle, Grupp, Huppert, Piatrowski, Ryan, Sneed, Touhy, Wilson, Simon—14

Nays: None."

6. *Resolution by Board of Commissioners of Cook County,* Printed in its Journal of Proceedings for November 23, 1965, p. 3596:

"November 22, 1965

To the Honorable, the Members of the Board of Commissioners of Cook County.

Members:

I transmit herewith an agreement submitted by Robert Cushman, attorney for the Chicago Law Institute, providing for the donation of the library collection of the Chicago Law Institute to the Cook County Law Library.

This agreement has been reviewed by the State's Attorney. He states that the County may *legally* enter into this agreement.

Therefore, I request authority from the County Board to execute this agreement.

Respectfully submitted,
SEYMOUR SIMON
President"

The agreement (which was the same as Exhibit C later attached to the complaint in 65 CH 6863) followed at pp. 3597-3600, the pertinent concluding paragraph of the Resolution reading:

"Commissioner Bonk moved that the recommendation of the President be concurred in, and that the proper officials be authorized to sign the agreement on behalf of Cook County.

Yeas: Bobrytzke, Bonk, Chaplin, Dolesal, Erickson, Fulle, Grupp, Huppert, Piotrowski, Ryan, Sneed, Touhy, Wilson, Simon—15

Nays: None."

7. *U.S. Constitution*:

Art. I, s. 10: "No state shall pass any . . . . law impairing the obligation of contracts."

Amendments, Art. IV: "The right of the people to be secure in their . . . papers and effects against unreasonable search and seizure shall not be violated."

Art. V: "No person shall be . . . deprived of LIBERTY or property without due process of law; nor shall any private property be taken for public use without just compensation."

Art. XIV, s. 1: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the U.S.; nor shall any state deprive any person of . . . . LIBERTY or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

8. *Illinois Civil Practice Act* (1965 Ill. Rev. Stat., Chapter 110, Vol. 2)

a. Sec. 2: The Supreme Court of this State has power to make rules of pleading, practice and procedure for the . . . county, circuit, superior, Appellate and Supreme Courts' supplementary to, but *not inconsistent with* the provisions of this Act. (p. 1521)

b. Sec. 4: *This Act shall be liberally construed,* to the end that controversies may be speedily and finally determined *according to the substantive rights* of the parties. (p. 1522)

c. Sec. 57: *Summary Judgments and Decrees* (3) *Procedure.* The opposite party may . . . *at the time* of the hearing on the motion file counter-affidavits. The judgment or decree sought shall be rendered forthwith, if the *pleadings, . . . together with the affidavits,* if any, shall show that there is no genuine issue as to any *material* fact and that the moving party is entitled to a judgment or decree *as a matter of law.* (p. 1532)

d. Sec. 76: *Amendment of 1965, effective Jan. 1, 1966. Limitation of review*—Perfection of appeal. (1) No

appeal may be taken from a trial court to the Supreme or Appellate Court after the expiration of 30 days from the entry of the order, decree, judgment or other determination complained of, but notice of appeal may be filed after the expiration of the 30 days, and within a period not to exceed 14 months from the entry of the order, decree, judgment or other determination complained of, by order of the reviewing court, entered within the 14 months, upon petition filed and notice given to adverse parties within 1 year from the entry of the order, decree, judgment or other determination, and upon a showing by affidavit that there is merit in appellant's claim for an appeal and that the failure to file notice of appeal within the 30-day period, or the failure properly to prosecute an appeal which was perfected within the 30-day period was not due to appellant's culpable negligence. The fact that appellant may have filed a notice of appeal prior to the filing of his petition for leave to appeal does not deprive the reviewing court of the power in its discretion to grant leave to appeal. The reviewing court in its order granting leave to appeal shall fix the time for the filing (within the 14-month period) of the notice of appeal which it allows. . . .

(2) An appeal is perfected when the notice of appeal is filed in the lower court. After being perfected no appeal shall be dismissed without notice, and no step other than that by which the appeal is perfected is jurisdictional. As amended by act approved May 19, 1965. L. 1965, p. 628, H.B. No. 948. Effective Jan. 1, 1966. (p. 1537, Vol. 2)

9. *Supreme Court of Illinois Rules, in force while this litigation was pending. Direct Appeals to the Supreme Court.* Ill. C.P.A., § 75.

a. Rule 28-1. Appeals from the final judgments of circuit courts shall be taken directly to the Supreme Court: . . . (b) in cases involving a question arising under the Constitution of the U. S. or of this State.

Applications for Appeal Within One Year

b. Rule 29. The application for leave to appeal under sec. 76(1) of the Civil Practice Act shall be by petition

and affidavit, which shall be printed and filed, with proof of service as prescribed for briefs. The opposing party may file an answer within 15 days after the petition and affidavit are served upon him. The answers shall be printed and filed, with proof of service, as prescribed for the petition and affidavit.

The petition shall be accompanied by a transcript of the portions of the record of the trial court necessary to present the questions upon which petitioner seeks review and an abstract thereof as provided by rule. Additional portions of the record and an additional abstract may be filed by the opposing party with the answer to the petition. The petitioner may file a praecipe for record without filing a notice of appeal and the opposing party may file a praecipe for additional parts of the record.

The court, or a judge thereof in vacation, may require bond and fix the amount and conditions thereof.

Each petition filed under this rule shall be accompanied by a notice of appeal. If the appeal is granted, the order of allowance shall be indorsed on the notice of appeal by the clerk, who shall send the notice of appeal so indorsed to the clerk of the trial court within 48 hours.

Form and Contents of Notice of Appeal

Rule 33. (1) The notice of appeal shall be entitled as follows:

(a) At the top shall appear the statement, "Appeal to the ..... Court," naming the court to which the appeal is taken, and below this shall be the statement "From the ..... Court," naming the court from which the appeal is taken;

(b) It shall be entitled in the cause, naming and designating the parties in the same manner as in the trial court, and adding the further designation "Appellant" or "Appellee";

(c) It shall be plainly designated "Notice of Appeal."

(2) It shall specify and describe the order, determination, decision, judgment or decree which is being ap-

pealed from, and if the appeal is from a part thereof only, it shall specify which part.

(3) It shall state what judgments, decrees, orders or proceedings are desired from the reviewing court by way of relief.

(4) It shall be signed by or on behalf of the party or parties joining in the notice of appeal.

Service of Notice of Appeal

Rule 34. (1) A copy of the notice of appeal shall be served upon each party whether appellee or coparty, who would be adversely affected by any reversal or modification of the order, judgment or decree, and upon any other person or officer entitled by law to notice of the appeal, within 10 days after the notice of appeal is filed in the trial court.

Notice of Appearance—Cross Appeal—Separate Appeal by Co-Party

Rule 35. (1) Each appellee who desires to prosecute a cross appeal from all or any part of the judgment, decision, order or decree, and each co-party who did not join in the notice of appeal but who desires to join as appellant or to prosecute a separate appeal shall within 10 days after service upon him of notice of appeal, serve a notice upon each party or attorney or firm of attorneys who signed the notice of appeal, and upon each appellee, person or officer entitled to receive notice of an appeal, and file a copy thereof in the trial court.

10. *Supreme Court of Illinois, New Rules, Tentative Final Draft distributed 5/20/1966, effective January 1, 1967.*

a. Rule 301. Method of Review of Appeals from the Circuit Court. Every final judgment of a circuit court in a civil case is appealable as of right. The appeal is initiated by filing a notice of appeal. NO OTHER STEP IS JURISDICTIONAL.

Rule 303.

(a) *Time.* Notice of appeal must be filed with the clerk of the circuit court within 30 days after the entry of the final judgment appealed from.

(b) *Time for Other Appeals.* If a timely notice of appeal is served by a party, any other party, within 10 days of service upon him, *or within 30 days of the entry of judgment, whichever is later,* may join in the appeal, appeal separately, or cross appeal, by filing a notice of appeal.

11. *Federal Rules of Civil Procedure and Rule 3(a)(d) of Title II of Federal Rules of Appellate Procedure.*

Rule 73. *Appeal to a Court of Appeals*

(a) *When and How Taken.* After stating the appeal may be taken within 30 days from the entry of the judgment appealed from, and that, upon a showing of failure to learn of the entry of the judgment, the district court may extend the time for appeal not exceeding 30 days from the expiration of the original time,

"A party may appeal from the judgment by filing with the district court a notice of appeal. *Failure of the appellant to take any of the further steps to secure the review of the judgment appealed from* does not affect the validity of the appeal."

(b) *Notice of Appeal* is similar to Rule 33, above of the Supreme Court of Illinois, and continues:

"Notification of filing of the notice of appeal shall be given by the clerk . . . *but his failure to do so does not affect the validity of the appeal.*"

APPENDIX G.

Analysis Of Other Than Law Libraries.

Attached as Appendix D (pp. 6a, 7a, 8a) is a tabulation of the number of college and university libraries grouped by the various Circuits within the federal court system, and by the percentage of the total in each group which is owned *privately*,[1] as gathered from statistics contained in U. S. Government publications.

Appendix D, Table I, p. 9a, breaks them down into universities, liberal art colleges, teachers' colleges, technical schools, theological schools, other professional schools, junior colleges, and into the percentage of the total in each group owned *privately*.[2]

Appendix D, Table II, p. 10a, is a breakdown of Table I by the number of millions of volumes.[3]

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[1] The percentages are: Distr. of Col. 94.74%; First Circuit 72.5%; Second 85.71%; Third 83.33%; Fourth 63.8%; Fifth 43%; Sixth 77%; Seventh 71.15%; Eighth 64.13%; Ninth 43.36%; Tenth 40%.

[2] Theological and other professional schools are owned *privately* 100% and 91.15%, respectively; liberal arts colleges 89.42%. Teachers' and Jr. colleges, however, are owned *publicly* 85.14% and 62.36%, respectively.

[3] Of 206 million volumes, 114 million, or 55.34% are owned *privately*. It is to be noted, however, that *privately* owned theological schools own 100% of all books in all theological schools; *privately* owned liberal art colleges own 83⅓% of all books in all liberal art colleges; *privately* owned "other professional schools own 66⅔% of all books in all "other professional schools.

Appendix D, Table III, p. 11a, is a breakdown of Table I by the dollars spent for books, and as a percentage of operating costs.[4]

Appendix D, Table IV, p. 11a, is a breakdown of Table I by enrollments in privately and publicly owned colleges and universities, broken down by attendance classifications.[5]

APPENDIX H.

Analysis Of Law Libraries.

Attached as Appendix E is a microscopic study of *law* libraries, grouped by Circuits, in *law schools,* by type of control (pp. 12a-26a); in *law firms* with 5000 or more law books (pp. 27a-32a); in corporations with 5000 or more volumes (pp. 33a-38a); and in office buildings (p. 38a).

Page 12a of Appendix E summarizes for each Circuit, and in total, the number of *privately* owned law libraries

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[4] *Privately* owned colleges and universities spent about $24½ *billion* for books; *publicly* owned about $31½ *billion,* but the percentage of total operating expenses was about the same.

[5] It is to be noted that the *size* of the school (measured by attendance) is smaller in *privately* owned colleges and universities; e.g., they constitute 95.19%, 86.43%, and 68.88% where fewer than 500 attend a school, 500-999, and 1000-2499, respectively. The *publicly* owned colleges and universities constitute 68.24%, 56.09%, and 70.67% in the 2500-4999; 5000-9999; and 10,000 and over enrollment groups, respectively.

in law schools, law firms, and corporations, and the number of books owned *privately* by each, vis a vis the number of state and municipally owned law libraries and the size of their law book collections. There are about 307 *privately* owned, sizeable law libraries which house about 8,685,000 law books. There are *54 publicly* owned law school law libraries (exclusive of an undetermined number of so-called "county law libraries" into which it is sought to remodel the Institute, and court libraries at various levels of the judiciary) which house about 4,698,000 law books; i.e., they constitute but 15% of the total 358 law libraries but own, in the *publicly* owned law school law libraries alone, 35% of the total number of the 13,383,000 volumes. This indicates a wide dispersal of small, *privately* owned law libraries throughout the United States, any one or more of whom may become prey for a superior financial force, motivated politically, seeking court aid to appropriate their private libraries for a public use without compensation, by transferring title thereto to the *publicly* owned law libaries located in the county court houses scattered throughout the land (See 1966 Directory of Law Libraries by the American Association of Law Libraries, Chicago), or that could be formed with them as a nucleus for a free law library open to the general public.

Page 13a of Appendix E indicates a trend in *public* ownership of law school law libraries similar to that in public ownership of the general libraries of colleges and universities. Of the 54 state and municipally owned law school law libraries, 46, or 85.18%, are in the six Circuits southwest and west of the Mississippi River. Of the 81 *privately* owned law school libraries, 42, or 60%, are owned and controlled by churches, 23 being Catholic who are keenly aware of Henry VIII's *prerogative cy pres* campaign, 20, or almost half, of the church-controlled law schools being situated in the Fifth, Seventh, and Ninth Circuits.

Of the 135 law school law libraries in the United States, the 54 *publicly* owned comprise 40%, and most of those *privately* owned, which are *non-sectarian* (39), are in the First, Second, Sixth and Ninth Circuits. The heaviest concentration (42%) of all law school libraries is in 3 Circuits: Fifth (19), Sixth (18) and Ninth (20). The heaviest concentration (⅓) of *privately* owned law school libraries is in 5 Circuits: First (5), Second (7), Sixth (5), Seventh (4) and Ninth (6). Stress and strains are most likely to occur in the Second, Fifth, and Ninth Circuits, as they have now occurred in the Seventh.

Page 14a of Appendix E breaks down the 135 law school law libraries by controls and by number of law books. It will be noted that 11 of the 81 *privately* owned law school law libraries (13½, almost 1/7) are not university affiliated. This makes them especially vulnerable to any connivers who may wish to appropriate their libraries for either the *publicly* or other *privately* owned law school, university affiliated (church or non-sectarian) law libraries, especially since they are small.

The concentration of ownership of law books by law schools (000 omitted) may be seen.[1]

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[1] Total No. Volumes in

135 law schools	11,137M		100.00%
54 *publicly* owned	4,698M		42.10%
81 *privately* "	6,439M		57.90%
42 church "	2,092M	18.87%	
28 non-sectar. "	3,927M	35.26%	
11 " " non-univ. aff.	420M	3.77%	
23 Catholic owned	1,244M		11.18%

Pages 15a-25a of Appendix E list all the 124 university-affiliated law school libraries by Circuit, by name of school, and by control, whether state, church, or private non-sectarian. Within parentheses, after each name, is shown the number of volumes owned to the nearest 1000.

Pages 25a-26a of Appendix E provide the same data for the 11 non-university affiliated law school libraries.

Pages 27a-32a of Appendix E list every law firm known to have 5000 or more volumes, which, so far, as indisputably *privately* owned. Their geographical distribution and volumes, as to each Circuit, is summarized.(2)

(2)

Circuit	No. Law Firms	Total Vols., Nearest M
Dist. Col.	4	41,000
First	4	43,000
Second	46	640,000
Third	8	74,000
Fifth	13	169,000
Sixth	9	126,000
Seventh	14	174,000
Eighth	7	46,000
Ninth	19	203,000
TOTAL	124	1,516,000

Pages 33a-38a of Appendix E list every corporation known to own 5000 or more volumes which, so far, are indisputably *privately* owned. Their geographical distribution and volumes as to each Circuit, is summarized.(3)

It will be noted that the 2,756,000 volumes owned *privately* by the 226 entities, other than law schools, exceeds the 2,512,000 vols. owned by 42 church, university affiliated and 11 non-university affiliated law schools (Appendix E, 14a)

(3)

Circuit	No. Corps.	Vols. Estimated in Some Cases
Dist. Col.	2	16,000
First	5	40,000
Second	24	325,000
Third	12	140,000
Fourth	3	45,000
Fifth	5	65,000
Sixth	9	100,000
Seventh	11	110,000
Eighth	5	36,000
Ninth	13	125,000
Tenth	7	115,000
TOTAL	96	1,117,000

Recapitulation:			
Law firms	124	No. Vol.	1,516,000
Corps.	96	" "	1,117,000
Office bldgs.	6	" "	123,000
Entities, other than law schools	226	" "	2,756,000

LIBRARY
SUPREME COURT, U. S.
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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 961

WILLIAM HETTLEMAN, ET AL.,
Appellants,

vs.

THE CHICAGO LAW INSTITUTE, ETC., ET AL.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

MOTION TO DISMISS APPEAL OR AFFIRM JUDGMENT.

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THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO 55

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. .....

WILLIAM HETTLEMAN, ET AL.,

Appellants,

vs.

THE CHICAGO LAW INSTITUTE, ETC., ET AL.,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

MOTION TO DISMISS APPEAL OR AFFIRM JUDGMENT.

Appellees move the Court, pursuant to Rule 16(1) of the Revised Rules of this Court, to dismiss the appeals herein, or, in the alternative, to affirm the judgments of the Supreme Court of Illinois, on the following grounds:

1. The Jurisdictional Statement does not conform to the requirements of Rule 15 of this Court.
2. The Federal questions sought to be reviewed were not passed on by the Courts of Illinois.
3. The judgments sought to be reviewed rest on an adequate non-Federal basis.

OPINION AND ORDERS BELOW.

This is a consolidated appeal seeking review of certain orders entered by the Illinois Supreme Court on June 20, 1967, and September 14, 1967, respectively. Appellants had sought review in the Illinois courts, pursuant to § 76 of the Illinois Civil Practice Act, of the final decree entered on June 13, 1966, by the Circuit Court of Cook County in Case No. 65 CH 6863. A copy of the said final decree is not included in the Appendix to appellants' Jurisdictional Statement. However, the opinion of Judge Donald J. O'Brien, sitting as chancellor in equity, appears at Appendix A.

The Illinois Supreme Court's order of June 20, 1967, denied the motion of appellants William Hettleman and Palmer D. Edmunds to reconsider that court's order of May 17, 1967. The latter order had denied leave to William Hettleman and Palmer D. Edmunds to appeal from an order of the Illinois Appellate Court entered on February 20, 1967. The Appellate Court's order of February 20, 1967, had denied the petition of William Hettleman and Palmer D. Edmunds for leave to appeal pursuant to § 76 of the Illinois Civil Practice Act. None of the foregoing court orders, other than the order of June 20, 1967, at Appendix B, are reproduced in the appendix to appellants' Jurisdictional Statement.

The order of September 14, 1967, denied the petition of J. Edward Jones for leave to appeal pursuant to § 76 of the Illinois Civil Practice Act. There were no prior proceedings in the Appellate Court on his petition, and he sought to appeal directly from the Circuit Court of Cook County. There were no subsequent proceedings requesting rehearing or reconsideration of the order of September 14, 1967.

The order of the Illinois Supreme Court entered on

June 20, 1967, from which William Hettleman and Palmer D. Edmunds appeal, appears at Appendix B of appellants' Jurisdictional Statement. The order of the Illinois Supreme Court entered on September 14, 1967, from which J. Edward Jones appeals, appears at Appendix C of appellants' Jurisdictional Statement.

JURISDICTION.

Appellants William Hettleman and Palmer D. Edmunds and appellant J. Edward Jones have consolidated their separate appeals from final orders of the Illinois Supreme Court. They rely on Title 28 U. S. C. Section 1257(2) as authority for prosecuting the consolidated appeals to this Court as of right. It is the position of appellees that § 1257(2) does not support the reliance of appellants because the Federal questions sought to be reviewed were not passed on by the Courts of Illinois and also because the judgments sought to be reviewed rest on an adequate non-Federal basis.

It appears that appellants originally intended also to consolidate with their appeals from the Illinois Supreme Court, the petition of Thomas A. McManigal for Writ of Certiorari to issue to the United States Court of Appeals for the Seventh Circuit. The Court of Appeals in that case affirmed two orders of the United States District Court for the Northern District of Illinois, Eastern Division. One of the orders denied petitioner's request to convene a three-judge Federal court to hear and determine the matter. The second order dismissed the action for lack of Federal jurisdiction and for failure to state a claim upon which relief could be granted.

At page 7 of their Jurisdictional Statement, however, appellants concede that § 1257(2) is inapplicable as authority for Thomas A. McManigal to appeal from the judg-

ment of the Court of Appeals, and they state that he will file a separate petition for writ of certiorari. Accordingly, this motion of appellees to dismiss the appeals or affirm the judgment hereafter deals only with appeals of Messrs. Hettleman, Edmunds, and Jones from orders of the Illinois Supreme Court. Thomas A. McManigal filed his separate petition for writ of certiorari on or about December 22, 1967, and the respondents in that case are filing a separate brief in opposition thereto, dealing only with Mr. McManigal's petition for certiorari to issue to review the judgment of the Court of Appeals for the Seventh Circuit.

QUESTIONS PRESENTED.

I.

Does a jurisdictional statement conform to the requirements of Rule 15 where appellants fail to specify the stages at which and the manner in which the Federal questions sought to be reviewed were raised in the proceedings in the State courts and the statement does not quote or summarize the specific portions of the record relied upon to establish jurisdiction by appeal?

II.

Does the jurisdiction of the Supreme Court of the United States attach on appeal from a State judgment where Federal Constitutional questions are not involved and the opinions and orders of the State trial, appellate and supreme courts do not mention, discuss, or pass on any Federal questions?

III.

Does the jurisdiction of the Supreme Court of the United States attach on appeal from a State judgment where the

sole issue presented to the State trial, appellate and supreme courts is the interpretation and application of State court rules and State statutes, and their Federal Constitutional validity is not challenged?

STATUTES INVOLVED.

Title 28 U. S. C. Section 1257:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * *
>
> "(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."

Illinois Civil Practice Act, § 76 [Repealed September 6, 1967]:

> "(1) No appeal may be taken from a trial court to the Supreme or Appellate Court after the expiration of 60 days from the entry of the order, decree, judgment or other determination complained of, but notice of appeal may be filed after the expiration of said 60 days, and within a period not to exceed 14 months from the entry of the order, decree, judgment or other determination complained of, by order of the reviewing court, entered within the 14 months, upon petition filed and notice given to adverse parties within 1 year from the entry of the order, decree, judgment or other determination, and upon a showing by affidavit that there is merit in appellant's claim for an appeal and that the failure to file notice of appeal within the 60-day period, or the failure properly to prosecute an appeal which was perfected within the 60-day period was not due to appellant's culpable negligence. * * *"

RULES OF COURT INVOLVED.

United States Supreme Court Rule 15:

"1. The jurisdictional statement required by paragraph 2 of Rule 13 shall contain in the order here indicated—

* * * * * *

"(d) A concise statement of the case containing the facts material to the consideration of the questions presented. If the appeal is from a state court, the statement of the case shall also specify the stage in the proceedings in the court of first instance, and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; with such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exceptions, portion of the court's charge and exception thereto, assignment of error) as will support the assertion that the rulings of the court were of a nature to bring the case within the statutory provisions believed to confer jurisdiction on this court.

"(e) If the appeal is from a state court, there shall be included a presentation of the grounds upon which it is contended that the federal questions are substantial (*Zucht* v. *King*, 260 U. S. 174, 176, 177, 43 S. Ct. 24, 25), which shall show that the nature of the case and of the rulings of the court was such as to bring the case within the jurisdictional provisions relied on and the cases cited to sustain the jurisdiction (subparagraph (b)(iv) hereof), and shall include the reasons why the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution."

Illinois Supreme Court Rule 35 [Superseded January 1, 1967]:

"(1) Each appellee who desires to prosecute a cross appeal from all or any part of the judgment, decision, order or decree, and each co-party who did not join in the notice of appeal but who desires to join as appellant or to prosecute a separate appeal shall, within 10 days after service upon him of notice of appeal, serve a notice upon each party or attorney or firm of attorneys who signed the notice of appeal, and upon each appellee, person or officer entitled to receive notice of an appeal, and file a copy thereof in the trial court.

. . . . . .

"(3) Any co-party or co-parties not having joined as appellants who, after being served with notice of appeal, do not appear and become a co-appellant by serving and filing a notice of appearance, or who do not file and serve notice indicating an intent to prosecute a separate appeal, are barred from thereafter prosecuting any appeal from the said judgment, order or decree."

Illinois Supreme Court Rule 315 [Effective January 1, 1967]:

"(a) Petition for Leave to Appeal; Grounds. A petition for leave to appeal to the Supreme Court from the Appellate Court may be filed in any case not appealable from the Appellate Court as a matter of right. Whether such a petition will be granted is a matter of sound judicial discretion. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered: the general importance of the question presented; the existence of a conflict between the decision sought to be reviewed and a decision of the Supreme Court, or of another division of the Appellate Court; the need for the exercise of the Supreme Court's supervisory authority; and the final or interlocutory character of the judgment sought to be reviewed."

STATEMENT.

These are appeals from orders of the Supreme Court of Illinois, entered on June 20, 1967, and September 14, 1967, respectively, denying leave to appellants to appeal from the final decree of the Circuit Court of Cook County, Illinois, entered on July 13, 1966, in Case No. 65 CH 6863. A complaint for declaratory judgment had been filed in that cause on December 10, 1965, by The Chicago Law Institute and Edward L. Arkema and John J. O'Brien, two of its members. The complaint recited why The Chicago Law Institute could not continue to operate in competition with the free law library proposed by the County of Cook for the 29th floor of the new Chicago Civic Center. It named as defendants the Attorney General of the State of Illinois, the County of Cook, and a representative number of members of The Chicago Law Institute, including some who were opposed to the relief which the plaintiffs requested. The prayer for relief requested that the Circuit Court of Cook County, sitting as a court of chancery, apply the assets of The Chicago Law Institute to some similar charitable use. Pursuant thereto, the plaintiffs prayed for approval of an agreement by and between The Chicago Law Institute and the County of Cook to transfer the Institute's library and other assets to the County to be used as or as a part of the County's law library, and for direction authorizing the Institute and the County to carry such an agreement into execution.

The Circuit Court of Cook County, after extensive hearings and briefs had been had in the matter, entered its final decree in Case No. 65 CH 6863 on July 13, 1966. The decree approved the agreement entered into by and between The Chicago Law Institute and the County of Cook providing for the Institute to turn over its law library and other assets to the County, to become the nucleus of the

Chicago Law Institute Law Library, operated and maintained by the County of Cook.

Appellants William Hettleman and Palmer D. Edmunds, who were defendants of record in Case No. 65 CH 6863, sought to appeal from the final decree, but their appeal was dismissed on September 20, 1966, by the Appellate Court of Illinois for failure to comply with Rule 35 of the Illinois Supreme Court Rules. On October 4, 1966, the Appellate Court denied their motion to reconsider dismissal of their appeal. On January 11, 1967, the Appellate Court denied their motion to vacate the order entered on September 20, 1966, dismissing their appeal. On January 24, 1967, William Hettleman and Palmer D. Edmunds petitioned the Appellate Court for leave to appeal pursuant to § 76 of the Illinois Civil Practice Act and Rule 29 of the Illinois Supreme Court Rules. The allowance of a petition for leave to appeal within one year under § 76 requires the dual showing (1) "that there is merit in appellant's claim for an appeal" and (2) that the failure properly to prosecute an appeal (*i.e.*, to appeal within the normal time for appeal) "was not due to appellant's culpable negligence." On February 20, 1967, the Appellate Court denied their petition for leave to appeal under § 76. William Hettleman and Palmer D. Edmunds appealed from the Appellate Court's order of February 20, 1967, and on May 17, 1967, the Supreme Court of Illinois affirmed that order and again denied their petition for leave to appeal under § 76. On June 20, 1967, the Supreme Court denied their motion to reconsider its denial of their petition for leave to appeal. William Hettleman and Palmer D. Edmunds now seek review in this Court of the order entered on June 20, 1967, by the Illinois Supreme Court.

Appellant J. Edward Jones, another defendant of record in Case No. 65 CH 6863, also sought to appeal from the final decree of July 13, 1966. His appeal was similarly

dismissed on September 15, 1966, for failure to comply with Rule 35 of the Illinois Supreme Court Rules. The order of dismissal was entered by the Illinois Supreme Court, to which J. Edward Jones had sought appeal directly from the Circuit Court of Cook County. Thereafter, on July 13, 1967, J. Edward Jones petitioned the Supreme Court for leave to appeal pursuant to § 76 of the Illinois Civil Practice Act and Rule 29 of the Illinois Supreme Court Rules. In order for his petition for leave to appeal within one year under § 76 to be allowed, it was necessary for J. Edward Jones to show (1) "that there is merit in appellant's claim for an appeal" and (2) that the failure properly to prosecute an appeal (*i.e.*, to appeal within the normal time for appeal) "was not due to appellant's culpable negligence." On September 14, 1967, the Supreme Court of Illinois denied his petition for leave to appeal under § 76. J. Edward Jones now seeks review in this Court of the order entered on September 14, 1967, by the Illinois Supreme Court.

ARGUMENT.

Appellants' Jurisdictional Statement is deficient in that it fails to conform to the requirements of Rule 15(1)(d) and (e) for demonstrating how the federal questions sought to be reviewed were raised and passed upon in the courts of Illinois, and in that it fails to establish the jurisdiction of this Court to hear the matter on direct appeal from the Illinois Supreme Court pursuant to Title 28 U. S. C. Section 1257(2).

I.

THE JURISDICTIONAL STATEMENT FAILS TO CONFORM TO THE REQUIREMENTS OF RULE 15(1)(d) AND (e) OF THE REVISED RULES OF THIS COURT.

Rule 15 of the Revised Rules of this Court sets out at some length just what is to be included in the Jurisdictional Statement. Thus if the appeal is from a State court, the Statement of the Case is to include a description of the manner in which the Federal question was presented. The showing as to how the Federal question was raised and passed on in the State courts is to be made with considerable particularity. In the absence of a sufficient showing thereof, this Court may dismiss the appeal.

Appellants' Jurisdictional Statement fails to conform to the requirements of Rule 15(1)(d) and (e) of the Revised Rules of this Court, and therefore is insufficient to establish the right of appellants' to direct appeal to this Court from the Illinois Supreme Court, for the following reasons:

1. Appellants have failed to specify the stages in the proceedings in the Circuit Court of Cook County, in the Illinois Appellate Court, and in the Illinois Su-

preme Court at which, and the manner in which, the Federal questions sought to be reviewed were raised.

2. Appellants have failed to specify the method of raising the Federal questions sought to be reviewed.

3. Appellants have failed to specify the way in which the Federal questions sought to be reviewed were passed upon by the Circuit Court of Cook County, the Illinois Appellate Court, and the Illinois Supreme Court.

4. Appellants have failed to quote those portions of the record and have failed to refer to those places in the record containing the matters which allegedly support appellants' assertion that the rulings of the State courts are of a nature to bring the case within Title 28 U. S. C. Section 1257(2) conferring jurisdiction on this Court.

5. Appellants have failed to show how the nature of this case or the nature of the rulings of the State courts are such as to bring the case within Title 28 U. S. C. Section 1257(2).

6. Appellants have failed to cite any cases whatever in support of sustaining the jurisdiction of this Court.

7. Appellants have failed to state any meritorious reasons demonstrating why the questions presented are so substantial as to require plenary consideration, with briefs on the merits and oral argument, for their resolution.

Accordingly, appellees respectfully submit that appellants' Jurisdictional Statement is insufficient, under the Revised Rules of the Court, to demonstrate jurisdiction to hear the Federal questions sought to be reviewed on direct appeal from the Illinois Supreme Court. Therefore this Court should not take jurisdiction to review the orders of

the State court, and this appeal should be dismissed or, in the alternative, the orders of the Illinois Supreme Court should be affirmed.

II.

THE FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE NOT PASSED ON BY THE COURTS OF ILLINOIS.

Appellants contend that both the County Law Library Act of May 5, 1961, 1965 Ill. Rev. Stats., Ch. 81, § 81; and a resolution of November 23, 1965, by the Board of Commissioners of Cook County, authorizing execution by the County of a proposed agreement with The Chicago Law Institute, were unconstitutional. Appellants contend further that they have been denied due process of law. They rely on Title 28 U. S. C. Section 1257(2) to establish their right of direct appeal to this court from orders of the Illinois Supreme Court. But § 1257(2) does not support appellants' reliance, and it does not afford any basis for direct appeal in this case.

Appellants appear to claim that the statute and the resolution in question are Constitutionally invalid because they constitute an impairment of contract, the contract being either a certain contract of February 18, 1857, between The Chicago Law Institute and its members, or a certain contract of March 11, 1958, between the Institute and the County of Cook. Neither contract, however, is pleaded or reproduced in an Appendix to Appellants' Jurisdictional Statement.

The resolution of the Board of Commissioners of Cook County does not amount to an ordinance or a law impairing the obligation of a contract. *Des Moines* v. *City Ry.*, 214 U. S. 179 (1909). Furthermore, appellants' conclusory allegations of impairment of contract and denial of due process of law, unsupported by any allegations of fact,

are insufficient to establish the jurisdiction of this Court to hear and determine a direct appeal under § 1257(2). See *Kregger* v. *Posner*, 248 F. Supp. 804 (E. D. Mich, S. D. 1966). Dispositive of the question of the jurisdiction of this Court to hear a direct appeal of the cause pursuant to § 1257(2), however, is the plain fact that nowhere in any of the proceedings had in this matter in any of the courts of Illinois have any Federal rights, privileges or immunities been considered, passed on or disposed of. The only basis for this Court's jurisdiction on direct appeal under § 1257(2) is the fact that the highest State court sustains the validity of a State statute against a challenge on Federal Constitutional grounds. But the Federal Constitutional questions which appellants seek to have reviewed on this appeal have never been passed on by the trial court or the appellate court or the Illinois Supreme Court. Title 28 U. S. C. Section 1257(2) therefore is inapplicable to this case and cannot establish the jurisdiction of this Court to hear the matter on direct appeal.

The burden is clearly on appellants to demonstrate that a Federal question was presented to the State court and that a decision on such a question was necessary to a determination of the cause. Thus where the highest State court delivers no opinion in rendering its judgment, and both Federal and non-Federal questions have been raised, this Court ordinarily presumes that the State court's decision is based on a non-federal ground, and jurisdiction will be declined. *Lynch* v. *New York ex. rel. Pierson*, 293 U. S. 52, 54-55 (1934); *Adams* v. *Russell*, 229 U. S. 353, 358 (1913); *Woods* v. *Nierstheimer*, 328 U. S. 211 (1946); *Phyle* v. *Duffy*, 334 U. S. 431 (1948). Where adequate State grounds are asserted and appear reasonable, "petitioner, in order to establish [the Court's] jurisdiction, must demonstrate that neither of these state grounds can account for the decision below." *Durley* v. *Mayo*, 351 U. S.

277, 281 (1956), *reh. den.*, 352 U. S. 859 (1956). The burden of establishing jurisdiction is not met if "it appears that the judgment [below] *might* have rested upon a non-federal ground." *Durley* v. *Mayo*, 351 U. S. 277, *reh. den.*, 352 U. S. 859 (1956); *Stembridge* v. *Georgia*, 343 U. S. 541, 547 (1952); *Ellis* v. *Dixon*, 349 U. S. 458, 459 (1955).

Appellants William Hettleman and Palmer D. Edmunds, recognizing the vulnerability of their direct appeal to dismissal for want of Federal jurisdiction, applied to the Illinois Supreme Court for certification that decision of Federal claims was necessary to its disposition of the case. That court, in considering appellants' motion for certificate on review, had before it their 3-page motion, the 5-page affidavit of William Hettleman, and a 19-page brief in support of appellants' request. On September 14, 1967, the Illinois Supreme Court denied the motion of appellants Hettleman and Edmunds. That court thereby declined to certify that its decision in the case had required the determination of any Federal claims.

Appellees respectfully submit that the Illinois court's denial of appellants' motion for certificate on review shows that the decisions of the Illinois Supreme Court of which appellants now seek review are based solely on adequate non-Federal grounds. The order of the Illinois Supreme Court entered on June 20, 1967, denied the motion of appellants William Hettleman and Palmer D. Edmunds for reconsideration of that court's prior order denying their petition for leave to appeal from the final decree entered in Case No. 65 CH 6863. The order of the Illinois Supreme Court entered on September 14, 1967, denied the petition of appellant J. Edward Jones for leave to appeal from the final decree entered in Case No. 65 CH 6863. Both orders were entered without opinion by the Illinois Supreme Court. Neither order mentions, discusses or passes on any such contentions as appellants make in this Court. Clearly,

neither order mentions, discusses, or passes on Constitutional or any other Federal questions.

Accordingly, appellees respectfully submit that the proceedings in the Illinois courts clearly have not involved questions of the Constitutional validity of any State statute, and that appellants therefore cannot establish Federal jurisdiction under § 1257(2) based on a claim that the State court has sustained the validity of a State statute against challenge on Federal grounds. This appeal should be dismissed or, in the alternative, the orders of the Illinois Supreme Court should be affirmed.

III.

THE JUDGMENTS SOUGHT TO BE REVIEWED REST ON AN ADEQUATE NON-FEDERAL BASIS.

The orders of the Illinois Supreme Court entered on June 20, 1967, and September 14, 1967, respectively, from which appellants seek to appeal to this Court, clearly rest on appellants' failure to comply with the applicable provisions of the Illinois Civil Practice Act and the Illinois Supreme Court Rules. Thus the orders which appellants seek to have reviewed rest on adequate and independent non-Federal grounds of decision.

The rulings of the Illinois Supreme Court are grounded on State procedure under the Illinois Civil Practice Act and the Illinois Supreme Court Rules. So long as the local procedure does not discriminate against the raising of Federal claims and has not been used to stifle a Federal claim or to evade vindication of Federal rights, this Court will respect local procedural requirements. See *Davis* v. *Wechsler*, 263 U. S. 22, 24-25 (1923). Accordingly, the State court judgments are *based* on a non-Federal ground, and the non-Federal ground is *adequate* to support the State court judgment. Therefore this Court lacks juris-

diction under Title 28 U. S. C. Section 1257(2) to review these cases. When "there can be no pretense that the [State] Court adopted its view in order to evade a constitutional issue, and the case has been decided upon grounds that have no relation to any federal question, this Court accepts the decision whether right or wrong." *Nickel* v. *Cole*, 256 U. S. 222, 225 (1921); *Wolfe* v. *North Carolina*, 364 U. S. 177, 195 (1960); see also *Atlantic Coast Line R. R. Co.* v. *Mims*, 242 U. S. 532, 536-537 (1917); *Parker* v. *Illinois*, 333 U. S. 571, 575 (1948).

The issues in the appellate proceedings prosecuted in the Illinois courts by William Hettleman, Palmer D. Edmunds, and J. Edward Jones have related wholly to questions of whether or not compliance has been had with the Illinois Supreme Court Rules and the Illinois Civil Practice Act governing appeals. The record of determinations to date includes the following:

1. On September 15, 1966, the Illinois Supreme Court dismissed the appeal of J. Edward Jones, presumably for his failure to comply with former Illinois Supreme Court Rule 35.

2. On September 20, 1966, the Illinois Appellate Court dismissed the appeal of William Hettleman and Palmer D. Edmunds, presumably for their failure to comply with former Illinois Supreme Court Rule 35.

3. On February 20, 1967, the Illinois Appellate Court denied the petition of William Hettleman and Palmer D. Edmunds for leave to file notice of appeal under former § 76 of the Illinois Civil Practice Act, presumably on the grounds that they had not met the statutory requisites for granting such relief.

4. On May 17, 1967, the Illinois Supreme Court denied the petition of William Hettleman and Palmer D. Edmunds for leave to appeal from the order of

CONCLUSION.

Appellees respectfully submit that the Federal questions which appellants seek to have reviewed were not passed on by the courts of Illinois; and that the judgments of the Illinois Supreme Court which appellants seek to have reviewed rest on an adequate non-Federal basis. Therefore the appeal should be dismissed or, in the alternative, the judgments below should be affirmed.

Respectfully submitted,

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JOHN F. DAVIS, CLERK

IN THE

SUPRME COURT OF THE UNITED STATES

OCTOBER TERM, 1967.

No. 961

WILLIAM HETTLEMAN, PALMER D. EDMUNDS,
and J. EDWARD JONES,

Appellants,

VS

THE CHICAGO LAW INSTITUTE, etc., et al.,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILINOIS

REPLY TO MOTION TO DISMISS
OR AFFIRM JUDGMENT

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J. EDWARD JONES.

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IN THE

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WILLIAM HETTLEMAN, PALMER D. EDMUNDS, and J. EDWARD JONES,

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VS

THE CHICAGO LAW INSTITUTE, etc., et al.,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

REPLY TO MOTION TO DISMISS OR AFFIRM JUDGMENT.

This Reply will follow the Appellees' topical sequence: (Jurisd. State. meant where refer. to main brief -too late to correct)

OPINIONS AND ORDERS BELOW

Appellees' Motion, p.2, second sentence, fails to note that appellants sought review also (appellants' main brief 13, bottom, 44-45) under the Illinois Supreme Court Rule 29 (When the practice was revised January 1, 1967, this Rule and the Illinois C.P.A. s. 76(1) to which it conformed were repealed, and replaced by Rule 303, but they still applied to cases then pending according to a prefatory by the Illinois Supreme Court to the New Rules).

The same omission was made on the same page, 2d paragraph, 4th line from bottom thereof; on the same page, 3d paragraph, 2d line thereof; and on pages 9-10 in their Statement. This Rule 29 (Appendix F9b, pp. 45a-46a) is the one year rule, permitting a party who did not file his Notice of Appeal timely, or filed a defective Notice of Appeal timely, to petition the appellate courts for leave to file an appeal by showing he had a meritorious case and had not been guilty of culpable negligence. It is important in this case for two reasons: (1) the appellees' studious reference omission may create the impression that appellants' petitions for leave to appeal in the appellate courts were denied for failure to comply therewith; (2) appellees did, and do, thereby suppress the fact that they, themselves, failed to comply with Rule 29 by submitting typed, instead of printed Answers to appellants' petition to the Illinois Appellate Court for leave to appeal under both sec. 76(1) of the Civil Practice Act and under Supreme Court Rule 29. Appellants' main brief, p. 45, noted this dereliction which was in the same category as the alleged dereliction of appellants in non-compliance with Rule 35. Appellees' dereliction in non-compliance with a procedural rule was indisputable. The alleged appellants' dereliction

as will soon be demonstrated beyond peradventure at page 26 of this Reply, did not even exist because Rule 35 did not exist legally, and, at most, was highly doubtful. In truth, both derelictions were miniscule. Appellees have raised a tempest in a teapot.

2. Appellees' Motion, p. 2, 1st paragraph, lines 7-8 state that a copy of the Final Decree of July 13, 1966 was not included in appellants' Appendix. The impression sought to be created may be that appellants have kept it from this Court. Appellants' main brief, p. 2, states that the trial court's opinion appeared in the Record, Document No. 2, at pp. 137-39. This Court could hardly miss the Decree at pp. 132-33 of that Doc. 2, known as Abstract of Record in the trial court. To have included the Decree in the appellants' Appendix may have violated this Court's Rule 15(1)(a) requiring reference to opinions only. Rule 15(1)(b)(ii) required reference only to dates of orders sought to review. Why impose needless duplicative material on this Court?

3. Page 2, paragraph 2, last sentence, states that the appellants' Appendix contained no reference to certain orders of the Illinois Appellate Court on February 20, 1967 and of the Illinois Supreme Court on May 17, 1967. Rule 15

does not require their inclusion in the Appendix. Such inclusion would also have burdened this Court with needless duplicative materials, since reference was made in the appellants' main brief to the Record where the original orders may be found. (Appellants' main brief 45 refers to the Appellate Court order of February 20, 1967 as being Doc. 3 of the Illinois Supreme Court Record in #40603 transmitted by its Clerk to the Clerk of this Court. Appellants' main brief 47-49 discusses fully the Hettleman-Edmunds Petition and Supplemental Petition for leave to appeal to the Ill. Supreme Court, the denial thereof, and Motion to Reconsider, referring to the Record there in #40603 where the order of May 17, 1967 appears clearly as Doc. 8 in the Index to Documents transmitted to this Court.)

JURISDICTION

Page 3, 2d paragraph, last sentence thereof, referring to the in rem proceeding under Ex Parte Young, 209 U.S., filed July 1, 1966 in the Chicago federal court, misrepresents the true holding. No. 962 in this Court is the companion and sequential Petition for Certiorari

to the Seventh Circuit to determine if the true holding, that Title 28 U.S.C. s. 2283 and Dombrowski forbade the relief prayed to enjoin state officers from interfering with the peacable enjoyment of their workshop, by the Institute and its members, is sound. Quo warranto was filed in the Circuit Court of Cook County, on December 1,1966, to inquire by what authority / Cook County and its conspirators among unfaithful members of the Institute's Board transferred the Institute library of about 150,000 volumes, including rare and out-of-print books, having a replacement cost of about $2,000,000, to the 29th floor of the Civic Center, Chicago and are maintaining and operating it as though this Court had already dismissed the appeal or affirmed the decree of July 13,1966, in violation of the dignity and authority of the Circuit Court of Cook County and its order of August 22,1966, construing the last page of Exhibit C, the donative contract attached to the Complaint in 65 CH 6863(Abs. 46), to permit physical "relocation""provided that operation of The Chicago Law Institute be continued in the same manner as prior to the entry of the decree, until said decree is affirmed or dismissed"finally(i.e., under the management and control of its members and its duly

elected officers and managers). Direct appeal has been taken to the Illinois Supreme Court from the trial judge's order denying the petition for leave to file the complaint, after taking over 5 months to decide the legal sufficieny of the petition, without opinion. Oral argument will be heard on March 25, 1968 in the Illinois Supreme Court on whether Cook County et al have usurped the Institute's franchises and the members rights therein. It is anticipated that, as heretofore, the appeal will be denied by the entry of an order without comment or opinion, in which case a review will be sought in this Court.

It may be approriate here also to advise this Court of another direct appeal to the Illinois Supreme Court from an order of the Circuit Court of Cook County, denying a petition for mandamus, filed April 14, 1966, to compel the president and secretary of the Institute to call an annual meeting of the Institute which they have refused to do in 1966, 1967, 1968 in order to strangle the Institute financially, and manufacturing the evidence to support the allegation in their Complaint that it is not, or will not be, possible for the Institute to continue. The ostensible reason, an afterthought, is

that the appellees wish to preserve the statusquo till this Court will dismiss this appeal or affirm the decree of July 13,1966. The trial court granted about 13 continuances in about as many months,till the plaintiff pleaded for denial of his petition so an appeal could be taken from his order grounded on the view that,the decree, having in effect dissolved the Institute,an annual meeting of the members would be useless. This order was entered by Charles S. Dougherty,J., one ofthe 4 judges who signed the 1963 judges' report(Appellants' main brief 21). Assessments are levied on the Institute members at each annual meeting on the last Friday in January to support the Institute -its sole support. Oral argument will be heard on March 27,1968 in the Illinois Supreme Court on whether the members have been deprived of their sacred right to vote and participate in the Institute corporation's affairs. It is anticipated that,as heretofore, the appeal will be denied by the entry of an order without comment or opinion,in which case review will be sought in this.Court.

This Court may wish to postpone consideration of the pending appeal and petition for certiorari(Nos. 961 and 962) to consolidate them with the quo warr-

anto and mandamus cases, under the Supremacy Clause.

STATUTES INVOLVED

The Illinois C.P.A.,s. 76(1), does not square with the same section in Appellants' Appendix F8,pp. 44a-44b, in that the former had been amended in 1965 to take effect soon after the suit in 65 CH 6863 was filed on December 10,1965,reducing the time in which to file a Notice of Appeal from 60 days to 30 days. This inexcusable lapse,as well as some above noted, and to be hereafter noted, seems to indicate a hasty reading, not a careful study, of appellants' main brief.

QUESTIONS PRESENTED

Further errors of commission and omission will be pointed out in analyses of the Statement and Argument.

STATEMENT

Page 8,line 6. The Complaint (Abs. 1) filed in 65 CH 6863 was not for a declaratory judgment. It prayed "A. That this court approve the agreement" and to restrain action by the defendants in any other fori or calling the annual or special meeting. The plaintiffs in said suit never dared press for injunctions under such prayer. No briefs were ever filed before the trial court,unless affidavits in support

of motions be called "briefs", but oral arguments were held, especially on Jones' Amended Motion to Dismiss the Complaint, after which the motion was denied without comment.

Page 8, last 2 lines and top of p. 9. The Exhibit C, the donative contract attached to the Complaint, did not use "turn over". Appellees deliberatley use this phrase to avoid the use of the word "transfer"(Abs. 46) whose construction by the trial judge in his August 22,1966 order (see p. 5 of this Reply) is challenged in the quo warranto appeal to the Illinois Supreme Court.

Nor did Exhibit C state the Institute library was to be a"nucleus" for a county law library. The Institute's library of 150,000 volumes is a ready-made one that took 100 years to collect, at a total cost estimated at $5,000,000. It ranks among the 15 largest law libraries in the world, barring a handful of leading law school libraries.

Exhibit C, attached to the Complaint in 65 CH 6863, (Abs. 41) refers to the Cook County December 11,1962 proposal(Appellants' Appendix F2, p. 42a) to call the "donated" library The Chicago Law Institute Library of Cook County. The 1963 judges' report(Abs. 67, bottom,)

also refers to such proposal. In practice, the Institute's library, now "relocated" on the 29th floor of the Civic Center, Chicago, is named the Cook County Law Library. All identity of the Chicago Law Institute has been removed. Its phone has been discontinued, so that it is hard to reach its members there. Cook County now employs over 40 people, including former Institute employees, on a budget of over $500,000 yearly. The personnel increase noticeably as elections approach. On an annual budget of $80,000 the members provided the payroll for a Librarian, an Assistant Librarian, secretary, and 4-5 page boys which consumed ½ the budget. The other $40,000 paid for new books and the repair of old ones.

Page 9, first paragraph, is misleading in some respects. The alleged non-compliance decisions referred to will be treated more approriately under Points II and III of the appellees' Motion to Dismiss, where it will be demonstrated that the denials referred to must have been based necessarily on a consideration of the federal questions, in which case this Court can review them.

A misleading inference may be created by failure

to quote fully, in the middle of the page, (2) from the C.P.A,sec. 76(appellants' Appendix F8,pp. 44a-45a). Appellants filed their Notice of Appeal in the trial court within the 30 day statutory period,which was timely and perfected the appeal,according to sec. 76(2), and they prosecuted their appeal by serving a copy of their Notice of Appeal directly to each co-defendant and on each adverse party within the time specified in Rule 34(appellants' Appendix F9,p. 47a),and filed their praecipes in accordance with the law,none of which the appellees have denied. Sec. 76(2) stated that no step after filing their Notice of Appeal was jurisdictional,and sec. 4 of the C.P.A. states construction of rules made pursuant to the Act,under sec. 2 thereof, shall be liberal that the substantive rights of the parties be determined(Appendix F8,p. 44a).

On page 8,3d sentence,the statement is made that a ground for the application of cy pres was the inability of the Institute to meet competition from a free,public law library,since the Institute members would not be willing then to pay assessments. Since Cook County had no real or comparable library to the Institute's which took 100

years and $5,000,000 to accumulate, a wrong impression is created that such competition was imminent. Reference has been made already to the fact that the appellees, by refusing to call annual meetings to levy assessments for the Institute's support, were manufacturing a situation of financially inability to carry on, as an additional ground for cy pres. It shocks the conscience, moreover, that, to attain its objective to take the Institute library for a public use without compenastion, Cook County and its confederates can be permitted by this Court to say: "If you do not submit and surrender your library, we will set shop next to you and, by free service, drive you out of business." Would this Court for one moment sanction the conduct of a large and financial resourceful industrial corporation asking its competitor to merge, and, if it refuses, to drive it to the wall by reducing its prices or giving away its goods? To ask a court of equity to apply cy pres, that is precisely the argument appellees advanced to the chancellor.

The above correctional remarks apply equally to the same terms, about failure to prosecute the appeal, used by the appellees as to Jones.

ARGUMENT

I.

Non-compliance with Rule 15(1)(d) and (e) in appellees' Motion to Dismiss is charged at pp. 11-12. The substance is that the Jurisdictional Statement did not state at what stages in the trial and appellate courts, the manner, method, the way the federal questions were raised, and no reference was made to the record that would confer jurisdiction on this Court. It is, therefore, necessary to summarize or recapitulate a whole section, pp. 30-51 of the appellants' main brief, "How The Constitutional Questions Were Raised in the State Courts." How the appellees could so conclude in the face of minutiae, fully documented, in that Section is hard to understand. To meet the charge will expand this Reply beyond the original intent.

The Section divided the scenes into what took place in the trial court, in the Illinois Appellate Court, and in the Illinois Supreme Court, at what stage, by what documents, and where they appear in the Record, as to each major defendant, Jones, Black et al, and Hettleman-Edmunds.

In the trial court, Jones raised in the petition for change of venue from O'Brien, J. denial of procedural due process (Jones R. 40,788) contrary to the 14th amend.

In his Amended Motion to Dismiss the Complaint, he raised the nature of the Chicago Law Institue corporation and the deprivation of his substantive rights under its charter by a conspiracy, using the amendment, in 1963, to the County Law Library Act, c. 81, s.81, to deprive the Institute and its members of their property contrary to the 5th and 14th amendments (Jones R. No. 40788, pp. 60-69, 125, 132-160, 178-79, 64-67; appellants' main brief 30-33). In his later Motions to Strike the affidavits supporting the plaintiffs' vacuous motion for summary judgment, B-e attacked Cook County's implementary ordinance of June 17, 1965 (Appendix F5, pp. 42a-43a) as state action. At B-g, he contended that the said 1963 amendment to c. 81, s. 81, if permitted to accomplish its purpose would constitute a denial of due process (Jones R. 40788, pp. 252-59; main brief 34). Quotationswere made from his later motion.

In the trial court, the Black et al. Answer, adopted by appellants Jones and Edmunds, attacked the constitutionality of the November 23, 1965 Cook County implementary ordinance (Appendix F6, p. 43a), paragraph 14 setting out 12 counts in a bill of particulars the

details of the conspiracy to deprive them of their personal and property rights. Quotation was made from their Answer.(main brief33-34).

In the trial court,Hettleman's proffered counter-affidavit at the hearing on the plaintiffs' motion for summary judgment and in opposition thereto was not permitted to be filed,contrary to established statutory and decisional law which constituted a denial of his constitutional right to due process of law. The main brief omitted to state that the trial judgealso denied him certification of the report of proceedings,because it was expected his Notice of Appeal would be dismissed. That deprived him of part of his record and of due process. This may be considered properly as a subsidiary question fairly within Cle) on p. 9 of the main brief.

O'Brien,J's Opinion(Appendix A,pp. 1a-3a) speaks for itself. It shows amply that the federal questions were presented to him fully,that he considered them, and found them without merit.

In the Illinois Appellate Court,Hettleman and Edmunds resisted vehemently the plaintiffs' motion to dismiss their appeal as feigned and baseless and so

a denial of due process in not affording them an opportunity to be fully heard. Pages 38-39of appellants' main brief sets out their grounds fully. The subject will be treated again in the analyses of the appellees' main brief, Points I and II.

In the Illinois Appellate Court, the Black et al. Brief and Argument presented every federal question now being presented to this Court, although not in the same form or words. Pages 41-43 summarizes the arguments. They spelled out the Institute's charter, the Institute's and the members rights, franchises, privileges and immunities. The trial court's holdings and the errors therein were exposed in the minutest detail. His lack of jurisdiction over the the subject matter and over the parties was demonstrated. If true, all proceedings have been null and void, and any discussion as to non-compliance with Rule 35 would be moot. Dartmouth College principles and their affirmation in Washington Home, 157 Ill. 414 were called to the Appellate Court's attention at pp. 26-28 of the Black et al. Brief and Argument(Hettleman-Edmunds Record in #40603, Ill. Supreme Court, Doc. 4 of Index of Docs. transmitted to this Court).

In the Illinois Appellate Court, the printed petition of Hettleman and Edmunds in #51,962, for leave to file their Notice of Appeal within 1 year of the July 13, 1966 decree (C.P.A. sec. 76(1) and Rule 29)(Appendix F8, pp. 44a-44a; F9, pp. 45a-46a), the Black et al. Brief and Argument(Doc. 4 of Index of Docs. transmitted to this Court in the Hettleman-Edmunds Record #40603 in the Ill. Supreme Court), as corrected, were again before it. The Petition itself showed that the members had distributive rights upon dissolution which the appellees contend they have not, and in which O'Brien, J's Opinion so held; and that the Institute charter, which that Opinion construed to be a private corporation originally altered into a charitable corporation by the 1907 amendment thereto, remained unaltered by that 1907 amendment to sec. 2 of the charter (Doc. 3 of Index to Docs. transmitted to this Court includes that Petition as part of the Record in #51,962 in the Appellate Court).

In the Illinois Supreme Court, taking no chances due to Parker v. Ill., 333 U.S. 571, cited on p. 17 of the appellees' Motion to Dismiss, Jones appealed directly to that Court in 40,154, under Rule 28-1(Appendix F9,

p. 45a). The 1962 amendment to Article VI of the Ill. Constitution, effective Jan. 1,1964, permits appealeto the Appellate Court without waiver of any constitutional questions on later appeal from its judgment to the Ill, Supreme Court. Jones' appeal was dismissed,on September 15,1966, before the trial court record could be brought before it pursuant to his praecipe duly filed. The trial court record,as just demonstrated, had presented the federal questions now presented to this Court,and had been considered there to be without merit. On the basis of the Ill. Supreme Court action on Jones, the Appellate Court followed suit immediatly by dismissing the appeal of Hettleman and Jones,on September 20,1966. Jones' affidavit,attached to his appeal,did adopt the Black et al Answer (Abs.51-74 in Doc. 2 of Index to Docs. in Hettleman-Edmunds Record #40603 transmitted to this Court). That Answer did present the fedral questions review of which is asked here(appellants' main brief4-10,33-34,41-44,46-47;their Reply herein,at pp. 14-15,16).

In the Supreme Court of Illinois,the Black et al. appeal in 40,483 presented the points and authorites

they presented to the Appellate Court in #51,619. Their petition for leave to appeal to that Court did raise unmistakably and clearly denial to them of due process of law and violation of the contract clause. (appellants' main brief 46-47; their reply herein 16).

In the Illinois Supreme Court, Hettleman and Edmunds presented the full Black brief and argument, as corrected (Doc. 4 of Index to Docs. transmitted to this Court), Their Petition, and Supplementary Petition, for leave to appeal (Docs. 1 and 6 of the Index to Docs.) and their Motion to Reconsider (Doc. 10 of said Index) presented to the Ill. Supreme Court ad nauseam the federal questions set up on pages 4-10 of the appellants' main brief. in Records #40483, #40603; #40903 (quo warr.); 40788, In opposing the appellants' efforts there, appellees argued persistently that the Appellate Court had gone into the merits of the federal questions presented to it and found them without merit, and in this Court they argue that this was not so, the decision in the appellate court having rested solely on non-compliance with Rule 35.

In opposing the Black et al. petition for leave to appeal from the Appellate Court, in #40483, the Answer of plaintiffs-respondents, the Institute, Arkema and O'brien, stated, at p.24 thereof:

"The record shows that the questions before the Appellate Court were in every case fully briefed and thoroughly considered before any determination was made by that Court."

In opposing the Hettleman-Edmunds petition for leave to appeal from the Appellate Court, in #40603, the Answer of plaintiffs-respondents, the Institute, Arkema and O'Brien, stated at pages 7-8 (Doc. 7 of Index in Record #40603 before this Court):

"...the questions raised by the Petition of WILLIAM HETTLEMAN and PALMER D. EDMUNDS are identical to the questions which had been raised by the petition of the clients represented by Attorney IRVING BREAKSTONE and which the Supreme Court determined adversely to those Defendants-Petitioners in Case No. 40483 on March 28, 1967. The questions are as follows:

1. Is the Chicago Law Institute a charitable and educational institution?

2. Was the Circuit Ct. of Cook Co. correct in applying cy pres in Case No. 65 CH 6863?

3. Did Plaintiffs-Respondents have capacity to file Case No. 65 CH 6863 seeking declaratory judgment?

4. Was the Circuit Ct. of Cook Co. correct in holding that the members did not have a property interest in the assets of the Chicago Law Institute?

5. Were the State's Atty. and the Atty. Gen. properly made parties defendant in Case No. 65 CH 6863?

6. Was the Circuit Ct. of Cook Co. correct in granting summary judgment in favor of Plaint-

iffs-Respondents?

7. Was the Appellate Court correct in dismissing the appeal of Defendants-Petitioners?

8. Was the Appellate Court correct in denying the Petition of Defendants-Petitioners for leave to file notice of appeal under former sec. 76(1)?

"Plaintiffs-Respondents respectfully submit that the foregoing questions are answered affirmatively, and that it follows that Defendants-Petitioners have made no showing whatever to warrant the Supreme Court in granting them leave to appeal."

In affirming, the Illinois Supreme Court must have reviewed whether the decisions of the trial and Appellate Court rested on federal as well as non-federal grounds.

In opposing the Jones' petition for leave to file his Notice of Appeal under the 1 year rule, in 40788, the Answer of plaintiffs-respondents, the Institute, Arkema and O'Brien, stated at pp. 7-8 that each of the foregoing questions were answered affirmatively by the trial judge. At p.5, of the said Answer, denying there was any merit in Jones' federal claims, it was stated:

> "..this Court considered the grounds on which J.Edward Jones now relies to establish the meritorious nature of his claim for leave to appeal under s. 76(1). The determinations of this Court in Case Nos. 40483 and 40603 that appeals were not warranted in those instances are dispositive of J.Edw. Jones' claim to leave for appeal under s. 76(1) on the same grounds."

and at p.3:

> "b. In Case No. 51962,the Appellate Court had denied the petition of William Hettleman and Edmunds for leave to file Notice of Appeal under former s. 76(1). Denial of the petition was in PART on the ground of culpable negligence in failing to comply with Rule 35.
>
> "c. In Case No. 40603, this Court denied the Petition of Hettleman and Edmunds for leave to appeal from the judgment of the Appellate Court in Case No. 51962 denying the Petition for leave to file Notice of Appeal under former s. 76(1). Denial of the petition was in PART on the ground that dismissal of the appeal and denial of leave to appeal within a year were proper,absent compliance with Rule 35."

Appellants Hettleman and Edmunds applied to Mr. Justice Schaefer of the Supreme Court,in vacation, to stay its Mandate(Doc. 8 of Index to Docs.). He asked 2 questions:(1) What was the federal question this Court would be asked to review? He was told, when the appellees insisted that the only question was non-federal,failure to comply with procedural

Rule 35, that, for the reasons given him, as here, Rule 35 was wholly inapplicable, wherefore procedural due process had been denied. (2)Had this federal question been raised in the appellate courts? When told that it was, he caused an investigation to be made. Upon verification, he then entered the order staying the Mandate till this Court could review(Doc. 9 of Index to Docs.).

In their brief opposing appellants Hettleman and Edmunds' appeal to the Ill. Supreme Court from the trial court's order denying leave to file a complaint in quo warranto(see pp. 4-5 of his Reply), they attacked the interest alleged to be separate from that of all citizens, residents, taxpayers of Cook County, as follows:

> "The question of any pecuniary or ownership interest of plaintiffs-appellants in The Chicago Law Institute or its books or its other assets, deriving from their status as members of the Institute, has been determined adversely to William Hettleman and Thomas A. McManigal in Case No. 65 CH 6863 in the Circuit Court of Cook County."

One must conclude from the foregoing that the appellees' attempt to discredit the Jurisdictional Statement on the grounds asserted was frivolous.

Page 12,objection 6 to the Jurisdictional Statement, asserts no case was cited therein to sustain this Court's jurisdiction. It indicates that the appellees must have read the Jurisdictional Statement hurriedly and uncritically,or that their objections were made reckelssly. At page 3,last paragraph of appellants' Jurisdictional Statement, is cited page 655 of Dartmouth College which states that this Court has jurisdiction "here is drawn in question the validity of a statute... on the ground of their being repugnant to the constitution ...and the decision is in favor of their validity." What better authority could be cited when its principles apply to the case at bar which does not involve any charity even?

II and III

These two points are obverse of the same question really, whether the appellate court decisions could have rested on the alleged failure of appellants to serve someone with an intent to appeal separately no later than 10 days from service upon them by a signed advice by the attorney for the appellees, The Chicago Law Institute,Arkema and O'Brien, that appellants' co-party defendants,Black et al. had the day before,

on July 14,1966,served them with a Notice of Appeal.

That the non-federal question raised by the appellees is feigned has beendemonstrated on pages 37-41 of the Jurisdictional Statement. Further demonstration will be made,since it is now clear that federal questions were presented to the Illinois courts and decided to be without merit,as appellees have heretofore admitted on a number of occasions, that their decision rested necessarily on these federal questions.

The test laid down by this Court has been repeated ad infinitum in this Court's decisions. Adams v. Russell and the more recent Wolfe v. N.C., both cited by appellees, contain apt statements of it:

In Adams,it was stated,at p. 359, that,if a state court rested its decision upon an independent ground, "then it must appear that such ground was a good and valid one. Klinger v. Missouri,13 Wall. 257,263. Otherwise,as was said in Neilson v. Lagow,12 How. 98,110,

> 'counsel might raise on the record some point of local law,however erroneous,and suggest that the court below may have rested its judgment thereon'

and,therefore,if the independent ground be not good and valid, it will not be presumed that the judgment was based upon it. See also Maguire v. Tyler."

In Wolfe, it was stated, at p. 185:

> "It is well settled that a state court may not avoid decidi/federal questions, and thus defeat the jurisdiction of this Court, by putting forward nonfederal grounds of decision which are without any fair or substantial supprt."

All must agree that, if federal questions were presented to the Illinois courts in the case at bar, and the alleged non-federal question did not exist, or it was not within the competence of those courts to decide, then their decisions must have rested on a consideration of the federal questions only, unless they avoided them by using the non-federal question as a pretext. That precisely happened in the case at bar for the following reasons, in addition to the reasons advanced at pages 37-41 which will not be repeated.

The 1962 amendment to Art. VI, the Judicial Dept., of the Illinois Constitution, made clear that parties were to have appeal as of right, instead of discretion, where state or federal constitutional questions were involved, even though one went to the intermediate Appellate Court first.

The Illinois Civil Practice Act, enacted in 1933, granted the Supreme Court power to make rules of pleading, practice and procedure for the courts, if

they did not contravene its provisions. Rule 35 was made pursuant to such power. Appellees' contention has been that, by the "gimmick" it used for which there is not any authority even to be found in Rule 35, it could cut down appellants' time in which to serve an intent to appeal to less than the statutory 30 days. In the case at bar, they tried to cut it down to 12 days (service in Illinois is as of the date of mailing and not upon receipt). The Supreme Court's power did not permit it to change the C.P.A. s. 76(1) and (2) which were clear that a Notice of Appeal may be filed in the trial court as of right, and not by court discretion, no later than 30 days from the entry of the decree on July 13, 1966, or by August 12, 1966, whereupon no other step is jurisdictional and the burden is upon anyone who would upset that Notice of Appeal. The Supreme Court recognized it did not have the power make a Rule 35, as appellees have construed it, and tardily made Rules 301 and 303 (Appendix F10, pp. 47a-48a, to conform to the amendment to Art. VI of the Illinois Constitution, and the C.P.A. secs. 76(1) and (2). This Court will not make the violent pre-

sumption that the Illinois appellate courts, having made correct rules 301 and 303 long before appellants even filed their Notices of Appeal, construed Rule 35 contrary to them. It must follow that (1) they considered the federal questions presented to them, or (2) chose to ignore them.

It remains only to examine the appellees' cases. If Rule 35 was inapplicable, the contention that appellants failed to "prosecute" the remedy under the 1 year rule loses its force. Appellees claim (p. 9, middle of page) that appellants Hettleman and Edmunds were guilty of culpable negligence by waiting from October 4, 1966 when the Appellate Court denied their motion to reconsider dismissal of their Notices of Appeal, or from January 11, 1967 when the Appellate Court denied their motion to vacate, to January 24, 1967 when they filed their petition in #51962 for leave to file their notice of appeal. In addition to doing the needed research and time taken to prepare the necessary documents, appellant Hettleman, on whom rested most of the burden since Professor Edmunds is 77 and carrying a full load teaching law, was defending their rights by assisting in the preparation of the Black et al

72 page Brief and Argument(P. 41,bottom of Jurisdictional Statement). Appellees must be quite desperate to charge laches under the above time table.

Page 15 of appellees' Motion to Dismiss concludes that the refusal of the Ill. Supreme Court to certify its ratio decidendi proves its decision rested on the alleged non-compliance with Rule 35. Its refusal was most likely due to a premature request. Since applellants had not at that time even filed their Notice of Appeal to this Court,how did the state court know vel or non their would be a request for review? If its intent was to dodge the federal questions presented to them indisputably,what other action could have been expected from it?

The cases cited by appellees will be discussed in the order of their appearance. At p. 13, Des Moines v. City Ry., 214 U.S. 179(1909) is cited for the proposition that the Cook County Board's resolutions are not ordinances,or state statutes. Mr. Justice Holmes held for the Court that,under Iowa laws,the"resolution" was a denial only of the Ry's claim,and did not dignify it as an "ordinance". It is to be noted that Des Moines is a municipality,and not a quasi-municipality as is

Cook County. The distinction between them, and the Illinois law is stated clearly in The County of Cook v. The City of Chicago, 311 Ill. at 239-240:

> "A municipal corporation is created principally for the advantage and convenience of the people of the locality. County and township organizations are created in this State with a view to aid in carrying out the policy of the State at large for the administration of matters of political government, finance, education, taxing, care of the poor, military organizations, means of travel, and the administration of justice. The powers and functions of county and township organizations, therefore, as distinguished from municipal corporations, have a direct and exclusive bearing on and reference to the general, rather than local, policy of government of the State" (citing cases in Ala., Ky., N.C., Ohio, Wisconsin, and in 1 Dillon, 4th ed., sec. 23). This Court has made the same distinction.

On Nov. 5, 1965, an appeal was filed in the Appellate Court, Chicago, from a summary judgment holding against the contention of one Moseid that the amendment of 1963 to the Counties Library Act, c.81, s.81 was unconstitutional because a $1.00 tax, called a "fee", was imposed upon him, under that amendment, as a defendant filing his appearance the alternative to payment of which was default. Since Moseid, a defendant in a small claims suit, was obliged to come into court against his will, he presented the federal question of whether the amendment was constitutional as denial of due process.

The Appellate Court has pigeon-holed the case, Chicago style, which may eventually come to this Court as another related case.

Mr. Hladis, whose name appears on the appellees' Motion to Dismiss, took the opposite view in Moseid. Page 2 of his brief there stated that Cook County's theory of the case was that the $1.00 may be exacted tho the library was on paper only:

> "it is sufficient that the passage of the County ORDINANCE creating such library has been accomplished."

Again, at p. 11, referring to the meaning of "establish", he stated:

> "The normal meaning of the term "establish", coupled with the formal establishment of such a library by a County ORDINANCE of September 30, 1963, satisfied the legislative intent which forms the basis for allowing collection of the library fee."

Murder will out! That appeal will probably remain pigeon-holed indefinitely since the Ill. Supreme Court is not likely to grant a petition for mandamus.

At pages 14-15 are grouped cases decided by this Court where state courts have not passed on federal questions. Since it has been established that the Ill. courts had such questions presented to them and passed on them in the trial court, and likewise in the app-

ellate courts necessarily, since it will not be presumed they dodged them deliberately, the cases are irrelevant. Review has been granted or denied where the record was clear to a fading range into the mystic where this Court has been divided, at times sharply by 5 to 4. In Kregger, the complaint, to recover from an attorney fees paid allegedly on the attorney's representation that he would obtain the convicted plaintiff a new trial, was brought in the Federal Court under the Civil Rights statute to avoid dismissal for want of diversity. The attorney was not a "state officer" and the complaint nowhere specified any federal claims which makes it easily distinguishable from the recitals in the Jurisdictional Statement. In Lynch, Pierson, a N.Y. resident was taxed under its income tax law on rental income from Ohio realty. The Appellate Division of the N.Y. Supreme Court annulled the tax without stating the grounds of its decision. The N.Y. Court of Appeals affirmed without opinion. Pierson contended the 14th amendment was violated. Review was refused because unlike in the case at bar, appellant did not even try to get the equivalent of a certificate as to the grounds. Adams involved the question whether "good time" could

betaken off the minimum sentence under the Michigan Indeterminate Sentence Act. The Michigan Supreme Court held it must be taken off the maximum sentence. This Court refused to review because here was a clear case of the substantial state question. In Woods, Illinois law provided no appellate review by habeas corpus application, unless jurisdiction over the subject matter and the parties had been raised, which Woods did not do upon filing such an application more than 5 years after the judgment of conviction. An 1945 Illinois statute provided a substitute for the writ of error, if taken within 5 years of such judgment. This Court refused to to review on an unambiguous state statute which was the basis for the Supreme Court's decision. It suggested, however, he go back and raise federal questions, and to come back if the limitation period was then held against him and all remedies at all times were denied him, for where imprisonment violates the U.S. Constitution, "the federal courts would be available to provide a remedy to correct such wrongs." No clear non-compliance with a state statute, but with an ambiguous improper court rule 35, was involved, as in the case at bar. Appeal was the proper remedy sought unquestionably by appellants.

Phylefollowed Woods. The State law gave the prison warden power to have a jury decide a prisoner's insanity. He exercised such power for Woods awaiting execution. Found insane,he was transferred to the State Hospital. Its Medical Superintendent,18 days later, certified him sane. Phyle brought habeas corpus instead of mandamus. The California Supreme Court held he could have applied again to the warden. Review by this Court was refused because the state law on which the decision was based did not admit of any ambiguity,which existed in the case at bar,on the view most favorable to the appellees. This Court was divided 6 to 3 in Durley. Durley raised the federal question of conviction on perjured testimony for the first time in a petition for rehearing,on denial of his second petition for habeas corpus before the Florida Supreme Court. This Court held that the state court mighthave passed on the federal question previously and refused to review,therefore,on the ground of res judicata which was not involved in the case at bar. A variation of the quotation from Adam (p. 25 of this Reply)appears on p. 82:"..it is likewise well settled that,if the independent (state) ground was not a substantial or sufficient one,'it will be presumed that the State court based its judgment on the law raising the federal question,and this Court will then take jurisdiction."

There can be no doubt from the Record that appellants raised federal questions in the Illinois courts.

Durley had followed Stembridge whose motion for a new trial was denied because the prior contradictory statement was impeaching evidence only and the Ga. Code did specifically deny a new trial on such ground. His motion for a rehearing raised the 14th amendment for the first time in the intermediate appellate court which then amended the Record to show that federal questions were necessarily passed upon in denying the motion for rehearing. Instead of asking the Ga. Supreme Court to review the amending order, a petition for certiorari was filed in this Court which denied it because it was clear the state's highest court never passed on the federal question which is not true in the case at bar, as appellees have several times admitted federal questions had been presented to the Illinois courts and found to be without merit. Even so, 3 members of this Court dissented. Ellis was given no reason for denial of the use of the Yonkers public school building for a forum on "peace and war." The N.Y. Education Act provided that each Board of Education could make rules for the use of school property for civic forums and community centers.

Ellis' petition got nowhere in the N.Y. courts for the reasons stated that it did not state that other similar organizations were denied permits(tho the affidavit supporting the motion for leave to appeal did so state,but no effort was made to amend the petition). This Court refused to review on a 5 to 4 vote because the petition was too vague to determine if its denial was based on a federal or state question. Can there be any doubt that the Answers and the Motions/and the Counteraffidavits in the Records in the case at bar set out fully the circumstances of the conspiracy between the appellees to take the personal and property rights of the Institute and its members for a public use without any compensation,in violation of Article I,sec. 10 of the U.S. Constitution and amendments 4,5,14(1) thereto?

Ellis relied on Wechsler, a resident of Illinois, who was hurt by a railroad train in a certain Missouri county but sued in Jackson County,Missouri,contrary to General Order 18-A issued under the 1920 Transportation Act. The Director General of Railroads filed his appearance and,as permitted under Missouri practice, pleaded to the jurisdiction and defended on the merits.

It was held that, since Order 18-A went to the venue only, it was waived by the defendant's appearance. The Missouri courts affirmed judgment for Wechsler. This Court reversed because the state courts, according to its opinion, thru Mr. Justice Holmes, may deal with procedure as they think proper in local matters, but they cannot treat it as defeating a plain assertion of federal right. This case would seem to support appellants, that a state court decision resting solely on procedure will not be respected always where a clear federal right has been presented.

Page 17 of appellees' motion cites 4 cases for the proposition that, if a decision is based on an independent and adequate state statute, it is not to be presumed the decision was made to evade federal questions. If it has been established that the decision in the case at bar rested on both the federal questions and the non-compliance with Rule 35, but it has also been established that the Court had no right to rely on Rule 35 because appellees' construction of it, adopted by the Court, contravened the Ill. C.P.A., secs. 2, 4, and 76(1) and (2), abridging the statutory right to 30

days, it will not be presumed, as appellees state on pages 17-18 of their Motion to dismiss, that the state courts' judgments were based on Rule 35. Thus, in Nickel:

On March 26,1913, Nevada passed a law taxing any transfer in contemplation of death. On April 17,1913, a California resident(who owned most of the stock in a Nevada corporation which owned a California corporation which owned sizeable property in Nevada) made an irrevocable trust with himself as beneficiary for life, and, after his death, upon limitations similar to his will executed at the same time. He died on October 14,1916. The Nevada Controller sued successfully to collect the transfer tax. The Estate argued that, since the Act did not take effect till April 26,1913, and the remaindermens' interest vested on April 17,1913, no tax was due. The Nevada Supreme Court held that the execution of the deed and will were one transaction. No right, hence, vested till the California resident's death. Writ of error to this Court was denied because the Nevada tax statute was properly passed upon by the Nevada court. Although Mr. Justice McKenna dissented, this is not a mystic, but a clear example of a decision on a substantial Nevada statute, and not on an unreasonable, ambiguous and

contradictory court rule. Nor was there any claim that the Nevada decided as it did to evade a federal question. Wolfe was decided by 5 to 4. The N.C. Supreme Court held that, as a matter of state law, it did not have before it in the Record, which was disputed by the dissent, the findings and judgment of the federal court which enjoined barring negroes from a semi-public property because they were negroes, and not because they were guilty of the N.C. criminal trespass law. This Court refused to review the N.C. courts' decisions on their evidentiary laws which, in the case, were regarded as reasonable and not frivolous. Mims turned also on state rules of evidence and pleading. The evidence at the trial showed the train Mims, a car inspector, was crossing the track to inspect when a switching engine ran him down and killed him, was a local freight train, run habitually and on the morning he was killed, in S.C. After the plaintiff rested, the RR., without having first sought to amend their pleading, unsuccessfully tried/to introduce evidence that the freight train was in interstate commerce and that the Federal Employers Liability Act was applicable. The Florida Supreme Court affirmed judgment for the plaintiff. This Court re-

refused review because any federal claim must be set up at the proper time and in the proper manner of pleading. The federal claims of the appellants were repeated over and over again in their answers, motions to dismiss the amended complaint and the affidavits supposed to support the motion for summary judgment, and in their counteraffidavits, in their oral arguments and in their petitions and briefs. But appellees have sought to lessen or destroy substantive federal rights and defenses by mailing a "Notice of a Notice of a Notice of Appeal" to appellants for which no authority existed in Rule 35, or elsewhere, and claiming non-compliance in 10 days which contravened the 30 day statutory right with which the Rule 35 was inconsistent and hence, legally, as if it never existed. At the time Parker was convicted, the Illinois Constitution, Article VI, Judicial Department, forbade an appeal first on federal questions, or otherwise, to the Appellate Court, if one wished to present them to the Ill. Supreme Court. This Court refused to review on a 6 to 3 vote. The dissent argued that Parker was protected by his first appeal to the Supreme Court, and denied he waived his rights by asking the Appellate Court to decide state questions.

If appellee are contending by the citation of Parker, that appellants Hettleman and Edmunds waived the right to present federal questions to the Supreme Court by first seeking review in the Appellate Court, what about Jones and the amendment to Article VI of the Ill. Const. which permitted it?

To support their contention that failure of appellants to respond to the "Notice of a Notice of a Notice of Appeal" by appellee, the Institute, Arkema and O'Brien, was jurisdictional, appellee cite Cutler and School District at page 18 of their Motion to Dismiss. These were decided before the 1965 amendment to the C.P.A., sec. 76(2) which states plainly that all steps other than filing the Notice of Appeal in the trial court shall be procedural. (Appendix F8, pp. 45a). Cutler involved a cross appeal issue when he was served properly by the adverse party with a Notice of Appeal and not by an agent mailing advice thereof by a paper called "Notice of a Notice of Filing a Notice of Appeal." The same situation arose in the 1934 case of the School District and failure to file a cross-appeal upon getting a Notice of Appeal, not a "Notice of a Notice of the Filing of a Notice of Appeal" by an unauthorized party, was jurisdictional

then.

Pages 18-19 of the appellees' Motion to dismiss contain the last 3 of 19 cases cited by them. The first 2 of the3 attack appellants failure to "perfect" their appeals. They must be reminded again that,since January 1,1966, or about 8 mos. before appellants filed their Notices of Appeals, an appeal was perfected by the simple act of filing in the trial court a Notice of Appeal,assimilating the Illinois practice to Federal practice(Appendix F8d(2),p. 452;F11,p. 48a). In Schwind, Forester mistakenly filed a Motion for a New Trial which the Court treated as a Motion to Vacate,instead of an Petition for Leave to Appeal. Forester played fast and loose,trifling with procedural rules and otherwise acting in bad faith. After his motion for a new trial or to vacate the decree, on April 30,1936, he filed a Notice of Appeal ,but did not follow through with filing bond,as directed, nor filing transcript of proceeding within the time,or at all,nor filing a report of proceedings,then moved ,on July 3,1936, moved to strike his own appeal from the order denying his motion for a new trial. He had,in short,failed to prosecute his appeal. No such failure can be properly charged, on the Record, to the appellants.

In Roy, leave to file an appeal was denied because appellant knew actually, on July 6,1935, when it came to the Court Clerk's office with the transcript of record that July 29,1935 was the last day the court rules permitted filing it;when, on July 16,1935,it was withdrawn to prepare the Abstract of Record and a bill for the filing fee was handed it. The transcript was not filed timely,and a lawyer of the experience of the City attorney and of ordinary prudence should have been diligent enough to have had a messenger at the least bring the transcript back to the Clerk's office. Roy is cited to prove a comparable situation in the failure of Hettleman,pro se and as attorney for Edmunds in receipt,during his absence from the City under the circumstances recited on pages 40-41 of the Jurisdictional Statement, of the "Notice of a Notice of Filing a Notice of Appeal" to respond on or before July 25,1966,although he knew nothing of the existence of that paper till his return to Chicago on August 3,1966. To what extreme will not appellees go to shore up a defenseless position.

At page 41 of the Jurisdictional Statement are cited 4 cases,of others that could be cited,where the very Appellate Court,First District,and the Ill.

overlooked worse derelictions
Supreme Court. In Barbee, Evans, a tenant, received timely notice of the termination of his year to year lease. He disavowed knowledge of the notice till some long time after he saw it in his desk. His eviction was reversed. In Chicago Cosmetic Co., its application for injunction was denied and it filed a Notice of Appeal. The City of Chicago moved to dismiss the appeal because Cosmetic had not served its coparties with copies of their Notice of Appeal under the Rules. Held, since their coparties would not be adversely affected by a reversal of the decree, Cosmetic was under no duty to serve their co-parties. It Has been the appellants' contention, in all the proceedings in the Illinois appellate courts, that Black et al. were under no duty to serve their coparties with a Notice of Appeal, and a fortiori appellees, the Institute, Arkema and O'Brien, had neither the duty, nor the right, to serve a "Notice of a Notice of Filing a Notice of Appeal" (they certainly had no right, as the completely victorious party to file a Notice of Appeal). How, then, could Rule 35, even if it did not contravene the 30 day statutory period, come into play, and support the courts' decisions on that procedural rule?

To the same effect was Pieczyski, which relied on Chicago Cosmetic Co. In Matanky, the statute then permitted service of Notice of an Appeal up to 90 days from the entry of the judgment. Service beyond the 90 days was excused because no one was prejudiced by the delay.

The final case cited, Cutter Labs, at p. 19 of appellees' Motion to Dismiss, belongs properly with Wolfe and the other cases on p.17, cited for the proposition that a state decision on independent and adequate nonfederal questions deprives this Court of jurisdiction to review. Cutter was decided 6 to 3. The California Supreme Court upheld Mrs. Clark's discharge from her job on the ground that she was a member of the Communist Party and not for her union activities in which federal law protected her, as the Arbitration Board held. Its scope under the California Arbitration Act was held to be for California to decide.

CONCLUSION

The Motion to Dismiss contains so many straw men, errors in citing wrong statutes and cases, catch phrases and paradoxes that it is entitled to little weight, and has placed a great and needless burden on counsel and this Court. The presentation of fed. quests. has been admitted.

Respectfully submitted,

William Hettleman
Palmer D. Edmunds
J. Edw. Jones
Of Counsel

Julius L. Sherwin
Atty. for Appellants

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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 961

WILLIAM HETTLEMAN, PALMER D. EDMUNDS, and J. EDWARD JONES,

Appellants,

vs.

CHICAGO LAW INSTITUTE, ET AL.,

Appellees.

On Appeal From The Supreme Court of Illinois

PETITION FOR REHEARING

Julius L. Sherwin,
7 S. Dearborn Street,
Chicago, Illinois 60603,

Attorney for Petitioners.

Of Counsel:
William Hettleman,
Palmer D. Edmunds,
J. Edward Jones.

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1967

NO. 968

WILLIAM HETTLEMAN, PALMER D. EDMUNDS, and J. EDWARD JONES,

Appellants,

vs.

CHICAGO LAW INSTITUTE, ET AL.,

Appellees.

On Appeal From The Supreme Court of Ill.

PETITION FOR REHEARING

To The Honorable Chief Justice and Associate Justices of the Supreme Court of the U.S.:

Come now William Hettleman, Palmer D. Edmunds, and J. Edward Jones, appellants in the above case, and present this, their petition, for a rehearing of the above case; and, in support thereof, show respectfully:

1. On Monday, March 11, 1968, this Honorable Court entered an order and per curiam opinion in the above case which reads:

"The motion to dismiss is granted, and the appeal dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari is denied."

2. It is assumed that the jurisdictional defect was that alleged in the motion to dismiss the appeal; namely, appellants' failure to comply with a procedural rule 35 of the Illinois Supreme Court.

3. The motion to dismiss the appeal alleged that the Supreme Court of Illinois denied leave to appeal to it solely on this non-federal issue.

4. Appellants' Reply to the motion to dismiss demonstrated (pp. 20-22) from the appellees' own answer that the merits on the federal claims had been examined and found wanting, and from which it appears that the Supreme Court may have rested its denial for leave to appeal to it on this ground also. Its order of denial was not accompanied with an opinion. For aught, the latter may have been the sole ground because to have rested its denial on the alleged failure to comply with Rule 35 would have required self-stultification, as argued at some length by appellants (Jurisdictional Statement 39,

first paragraph - 40;appellants' brief reply to motion to dismiss 19,last paragraph - 23).

5. In anticipation of this appeal,application was made,on August 4,1967, to the Chief Justice of the Illinois Supreme Court for a certificate of reasons which was denied,properly so perhaps because no Notice of Appeal was filed till September 15,1967,and there was no assurance that any appeal would be prosecuted. Had review been granted,appellants' intent was to move for leave to apply for such certificate.

6. Justice requires,in a full consideration of this case, that an opportunity be granted appellants to apply again to the Illinois Supreme Court that the sole ground for denial of leave to appeal was that the federal claims had no merit.

WHEREFORE, it is prayed respectfully that leave be granted to apply for such certificate and to file it in this case,and that the order of March 11,1968 be thereupon vacated and the case redocketed.

Respectfully submitted,

JULIUS L. SHERMAN
7 S. Dearborn Street
Chicago,Illinois 60603
Attorney for Petitioners

Pursuant to Rule 58,I hereby certify that the foregoing is presented in good faith,not for delay, and is restricted to the grounds specified in par. 2 thereof.

Julius L. Sherman

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967.

HETTLEMAN ET AL. *v.* CHICAGO LAW INSTITUTE ET AL.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

No. 961. Decided March 11, 1968.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for a writ of certiorari, certiorari is denied.